



भारत का राजपत्र The Gazette of India

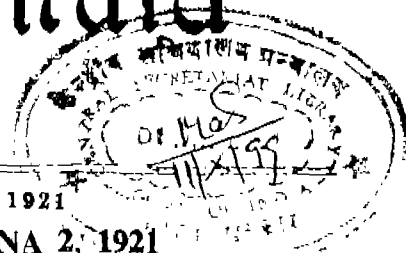
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नई दिल्ली, शनिवार, जुलाई 24, 1999/श्रावण 2, 1921

No. 30]

NEW DELHI, SATURDAY, JULY 24, 1999/SRAVANA 2, 1921



इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-Section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएँ

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विन मंत्रालय

(राजस्व विभाग)

(स्वापक नियंत्रण ब्यूरो)

नई दिल्ली, 28 जून, 1999

का.आ. 2060.—आपराधिक प्रक्रिया संहिता 1973 (1974 का 2) की धारा 24 की उपधारा (2) तथा (8) तथा स्वापक अधिनियम और मन. प्रभावी पदार्थ अधिनियम, 1985 (1985 का 61) की धारा 36 ग में प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, स्वापक अधिनियम तथा मन. प्रभावी पदार्थ अधिनियम, 1985 के कारण उत्पन्न हुए मामलों के प्रयोजनार्थ निम्नलिखित अधिवक्ताओं की विशेष लोक अभियोजक/प्रतिरिक्त विशेष लोक अभियोजक वरिष्ठ विशेष अभियोजक के रूप में उनके नामों के सामने वर्णित न्यायालयों में उनकी नियुक्ति की अधि 7-11-98 से तीन वर्षों तक पिछले नियमों एवं शर्तों पर और आगे बढ़ती है।

अधिवक्ता(ओं) का नाम वे न्यायालय जिनके सम्मुख उपस्थित होने के लिये प्राधिकृत किया गया है।

सर्वश्री

1. हीरा लाल भट्टाचारजी

प्रतिरिक्त विशेष लोक अभियोजक

(क) सी जे एम का न्यायालय, बारासन

(ख) जिला एवं सत्र न्यायालय, उत्तरी 24 परगना।

1	2
2. सिसिर कुमार घोष	विशेष लोक अभियोजक (क) नगर सत्र न्यायालय, कलकत्ता (ख) सी एम एम, न्यायालय, कलकत्ता (वाणिज्य न्यायालय)
3. अमितभक्त गंगुली	प्रतिष्ठित विशेष लोक अभियोजक (क) सी जे न, अलिपोर न्यायालय, दक्षिणी 24 परगना। (ख) जिला एवं सत्र न्यायालय, दक्षिणी 24 परगना।
4. कंचन लाल मुखर्जी	वरिष्ठ विशेष लोक अभियोजक जिला एवं सत्र न्यायालय, मुर्शीदाबाद, बरहामपुर, पश्चिम बंगाल।
5. चिनमय चौधुरी	वरिष्ठ विशेष लोक अभियोजक (क) सी जे एम, हावड़ा न्यायालय (ख) जिला एवं सत्र न्यायालय, हावड़ा।

[फा.सं. IV/4/95-स्वा. नि. व्यू. (विधि)]

एस. कुमार, उप विधि सलाहकार

MINISTRY OF FINANCE

(Department of Revenue)

(Narcotics Control Division)

New Delhi, the 28th June, 1999

S.O.2060.—In exercise of the powers conferred by sub-sections (2) and (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974) and section 36C of the Narcotics Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby extends the appointment of the following advocates as Special Public Prosecutor/Additional Special Public Prosecutor/ Senior Special Public Prosecutor in the Courts mentioned against their names for conducting cases arising out of Narcotic Drugs and Psychotropic Substances Act, 1985, for a further period of three years with effect from 7-11-1998 on the terms and conditions as applicable to them earlier :—

Name of the Advocate(s)	Court(s) before which authorised to appear
1	2
1. S/Shri Hira Lal Bhattacharjee	Additional Special Public Prosecutor (a) Court of the CJM Barasat (b) District and Sessions Court, North 24 Parganas.
2. Sisir Kumar Ghosh	Special Public Prosecutor (a) City Sessions Court, Calcutta. (b) CMM, Court Calcutta (Bankshal Court).
3. Amitava Ganguly	Additional Special Public Prosecutor (a) CJM Alipor Court, South 24 Parganas. (b) District and Sessions Court, South 24 Parganas.
4. Kanchan Lal Mukherjee	Senior Special Public Prosecutor District and Sessions Court, Murshidabad, Berhampur, West Bengal.
5. Chinmoy Chaudhuri	Senior Special Public Prosecutor (a) CJM, Howrah Court. (b) District and Sessions Court, Howrah.

[F.No. IV/4/95-NCB(Legal)]

S. KUMAR Dy. Legal Adviser

नई दिल्ली, 28 जून, 1999

का.भा. 2061.—स्वापक अधिधि और मनः प्रभावी पदार्थ अधिनियम, 1985 की धारा 36 ग (1985 का 61) एवं दंड प्रक्रिया संहिता, 1973 (1974 का 2) की धारा 24 की उप-धारा (2) तथा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा मणिपुर, इम्फाल सेशन न्यायालय/विशेष न्यायालयों में केन्द्रीय सरकार की ओर से स्वापक अधिधि एवं मनः प्रभावी पदार्थ अधिनियम, 1985 के तहत स्वापक नियंत्रण अधिनियम संबंधी मामलों में अभियोजन करने के लिए श्री ब्रजेन्द्र सिंह अधिवक्ता की विशेष अभियोजक के रूप में नियुक्ति को मौजूदा शर्तों एवं निबंधनों के आधार पर 30-10-98 से और आगे तीन वर्ष की अवधि के लिए बढ़ाती है।

[फा.सं. IV/4/95-स्वा.नि.अ. (वि.)]

एस. कुमार, उप विधि सलाहकार

New Delhi, the 28th June, 1999

S.O. 2061.—In exercise of the powers conferred by sub-sections (2) and (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974) and section 36C of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Central Government hereby extends the appointment of Shri N. Brajendra Singh, Advocate as special Public Prosecutor for a further period of three years with effect from 30-10-1998 for conducting cases arising out of Narcotic Drugs and Psychotropic Substances Act, 1985 in the Sessions Court/Special Courts at Imphal, Manipur on the existing terms and conditions.

[F. No. IV/4/95-NCB(Legal)]

S. KUMAR, Dy. Legal Adviser

आदेश

नई दिल्ली, 29 जून, 1999

स्टाम्प

का.भा. 2062.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा मैसर्स मेघना एग्रो इंडस्ट्रीज लिमिटेड, कलकत्ता को मात्र तीन लाख पचाहत्तर हजार रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त कंपनी द्वारा भारतीय औद्योगिक विकास बैंक कलकत्ता को आवंटित किए गए मात्र पांच करोड़ रुपये के समग्र मूल्य के एक-एक सौ रुपये प्रत्येक के 17.5% बैंकल्पिक पूर्ण परिवर्तनीय डिबेन्चरों पर स्टाम्प शुल्क के कारण प्रभावी है।

[सं. 31/99-स्टा./फा.सं. 33/41/99-बि.क.]

अपर्णा शर्मा, अवर सचिव

ORDER

New Delhi, the 29th June, 1999

STAMPS

S.O. 2062.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits M/s. Magna Agro Industries Limited, Calcutta to pay consolidated stamp duty of rupees three lakh seventy five thousand only chargeable on account of the stamp duty on 17.5 percent Optionally fully convertible Debenture of rupees one hundred each aggregating to rupees five crore only allotted to Industrial Development Bank of India, Calcutta by the said company.

[No. 31/99-STAMPS/F. No. 33/41/99-ST]

APARNA SHARMA, Under Secy.

आदेश

नई दिल्ली, 6 जुलाई, 1999

स्टाम्प

का.भा. 2063.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा मै. दामोदर वैली कारपोरेशन, कलकत्ता को मात्र नब्बे लाख इकतालीस हजार दो सौ पचास रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त कारपोरेशन द्वारा जारी किए जाने वाले मात्र एक सौ बीस करोड़ और पचपन लाख रुपये के समग्र मूल्य के एक-एक लाख रुपये प्रत्येक के डिबेन्चरों के स्वरूप वाले 13.50 प्रतिशत कराधेय सुरक्षित विमोच्य, अपरिवर्तनीय, गैर संस्थी पब्लिक सेक्टर बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभावी है।

[सं. 32/99-स्टा./फा.सं. 33/40/99-बि.क.]

अपर्णा शर्मा, अवर सचिव

ORDER

New Delhi, the 6th July, 1999

STAMPS

S.O. 2063.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits M/s. Damodar Valley Corporation, Calcutta to pay consolidated stamp duty of rupees ninety lakh forty one thousand two hundred fifty only chargeable on account of the stamp duty on 13.50 percent Taxable Secured Redeemable Non-Convertible Non Cumulative Public Sector Bonds in the nature of Debentures of rupees one lakh each aggregating to rupees one hundred twenty crore and fifty lakhs only to be issued by the said Corporation.

[No. 32/99-STAMPS/F. No. 33/40/99-ST]

APARNA SHARMA, Under Secy.

आदेश

नई दिल्ली, 6 जुलाई, 1999

स्टाम्प

का.आ. 2064.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा म. किलबर्न रेपोग्राफिक्स लिमिटेड, कलकत्ता को मात्र एक लाख पचास हजार रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त कम्पनी द्वारा जारी किए जाने वाले मात्र दो करोड़ रुपये के समग्र मूल्य के 1 से 200000 तक की विविध संख्या वाले एक-एक सौ रुपये प्रत्येक के 17% सुरक्षित, अपरिवर्तनीय डिबेन्चरों पर स्टाम्प शुल्क के कारण प्रभावी है।

[सं. 33/99-स्टा./फा.सं. 33/42/99-बि.क.]

अपर्णा शर्मा, अवर सचिव

ORDER

New Delhi, the 6th July, 1999

STAMPS

S.O. 2064.—In exercise of powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits M/s. Kilburn Reprographics Limited, Calcutta to pay consolidated stamp duty of rupees one lakh fifty thousand only chargeable on account of the stamp duty on 17 percent Secured Non-Convertible Debentures of rupees one hundred each bearing distinctive numbers from 1 to 200000 aggregating to rupees two crores only, to be issued by the said company.

[No. 33/99-STAMPS/F. No. 33/42/99-ST]

APARNA SHARMA, Under Secy.

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 13 जुलाई, 1999

का.आ. 2065.—सर्वसाधारण की सूचना के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार पैरा (3) में नीचे उल्लिखित उद्यम को आयकर नियमावली, 1962 के नियम 2इ के साथ पठित आयकर अधिनियम 1961 की धारा 10 (23छ) के प्रयोजनार्थ कर-निर्धारण, वर्ष 1999-2000, 2000-2001 तथा 2001-2002 के लिए अनुमोदित किया गया है।

2. उक्त अनुमोदन इस शर्त पर किया जाता है कि:—

(i) उद्यम आयकर नियमावली के नियम 2इ के साथ पठित आयकर अधिनियम, 1961 की धारा 10 (23छ) के उपबन्धों के अनुरूप होगा और उनका अनुपालन करेगा, ;

(ii) केन्द्र सरकार इस अनुमोदन को वापस ले लेगी यदि उद्यम :—

- (क) मूलभूत सुविधा को जारी रखना बन्द कर देता है; अथवा
- (ख) खाता बहियों को रखने में और आयकर नियमावली, 1962 के नियम 2इ के उप नियम (7) द्वारा यथापेक्षित किसी लेखाकार द्वारा ऐसी बहियों की लेखा परीक्षा कराने में असफल हो जाता है, अथवा
- (ग) आयकर नियमावली, 1962 के नियम 2इ के उपनियम (7) द्वारा यथापेक्षित लेखा परीक्षा रिपोर्ट को प्रस्तुत करने में असफल हो जाता है।

3. अनुमोदित उद्यम, राजस्थान राज्य विद्युत बोर्ड का सुरतगढ़ थर्मल पावर स्टेशन (प्रथम फेज की I तथा II इकाई), विद्युत भवन आर. सी. दवे मार्ग, जयपुर-302005 के नाम की परियोजना/औद्योगिक उपक्रम है।

[अधिसूचना सं. 10999/फा.सं. 205/34/98-आयकर नि.-II]

कमलेश सी. वार्शनेय, अवर सचिव

(Central Board of Direct Taxes)

New Delhi, the 13th July, 1999

S.O. 2065.—It is notified for general information that enterprise, listed at para (3) below has been approved by the Central Government for the purpose of section 10(23G) of the Income tax Act, 1961, read with rule 2E of the Income tax Rules, 1962, for the assessment years 1999-2000 and 2000-2001 and 2001-2002.

2. The approval is subject to the condition that—

- (i) the enterprise will conform to and comply with the provisions of section 10(23G) of the Income tax Act, 1961, read with rule 2E of the Income tax Rules, 1962;
- (ii) the Central Government shall withdraw this approval if the enterprise :—
 - (a) ceases to carry on infrastructure facility; or
 - (b) fails to maintain books of account and get such accounts audited by an accountant as required by sub-rule (7) of rule 2E of the Income tax Rules, 1962; or
 - (c) fails to furnish the audit report as required by sub-rule (7) of rule 2E of the Income tax Rules, 1962.

3. The enterprise approved is a project/industrial undertaking by the name of Suratgarh Thermal Power Station (Unit I & II of Phase I) of Rajasthan State Electricity Board, Vidyut Bhavan, R. C. Dave Marg, Jaipur-302005.

[Notification No. 10999/F. No. 205/34/98-ITA.-II]

KAMLESH C. VARSHNEY, Under Secy.

(आर्थिक कार्य विभाग)

वाणिज्य मंत्रालय

(बैंकिंग प्रभाग)

नई दिल्ली, 8 जुलाई, 1999

नई दिल्ली, 7 जुलाई, 1999

का.आ. 2066.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर घोषणा करती है कि उक्त अधिनियम की धारा 11 की उपधारा 1 के उपबंध सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से 31 मार्च, 2002 तक चमोली जिला सहकारी बैंक लि., गोपेश्वर (उत्तर प्रदेश) पर लागू नहीं होंगे।

[फा. सं. 1(11)/99-ए सी]

एस.के. ठाकुर, अवसर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 7th July, 1999

S.O. 2066.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendations of the Reserve Bank of India declares that the provisions of sub-section 1 of Section 11 of the said Act shall not apply to the Chamoli Zila Sahkari Bank Ltd., Gopeshwar (Uttar Pradesh) from the date of publication of this notification in the Official Gazette upto 31 March 2002.

[F. No. 1(11)/99-AC]

S. K. THAKUR, Under Secy.

का.आ. 2067.—केन्द्रीय सरकार, निर्यात (न्यायिक नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स नेशनल एल्यूमीनियम कम्पनी लिमिटेड को जिनका पंजीकृत कार्यालय जड़ू टावर, 8वीं मंजिल, भुवनेश्वर-751007, उड़ीसा में स्थित है कैल्सीड एल्यूमीनियम (एल्यूमीनियम आक्साइड के अंतर्गत) निरीक्षण के लिए जो कि मैसर्स नेशनल एल्यूमीनियम कं. लि. (भारत सरकार का एक उपक्रम) दमनजोड़ी-763008, उड़ीसा में विनिर्मित को उड़ीसा से निर्यात के लिए का.आ. 655 तारीख 17-3-1990 में अधिसूचित शर्तों के अनुसार 24 फरवरी, 1999 से तीन वर्ष के लिए प्रभावी निरीक्षण हेतु एक अभिकरण के रूप में मान्यता प्रदान करती है।

[फा. सं. 5/3/99-ई.आई.एण्ड ई.पी.]

ई.के. भारत भूषण, संयुक्त सचिव

MINISTRY OF COMMERCE

New Delhi, the 8th July, 1999

S.O. 2067.—In exercise of the powers conferred by sub-section (1) of Section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby recognises M/s. National Aluminium Co. Ltd., having their registered office at IDCO Tower, 8th Floor, Bhubaneswar-751007, Orissa, as the Agency for a period of three years with effect from 24th February, 1999 for inspection of Calcined Alumina (under the heading of Aluminum Oxide) manufactured at M/s. National Aluminium Co. Ltd., (A Government of India Enterprise) Ramanjodi-763008, Orissa prior to export subject to the conditions notified vide S.O. 655 dated 17-3-1990.

[F. No. 5/3/99-EI&EP]

E. K. BHARAT BHUSHAN, Jt. Secy.

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 7 जुलाई, 1999

का.आ. 2068.—दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की धारा 10 की उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार, भारतीय दंत चिकित्सा परिषद से परामर्श करके उक्त अधिनियम की अनुसूची के भाग I में निम्नलिखित और संशोधन करती है, नामतः—

उक्त अनुसूची के भाग I में मराठवाड़ा विश्वविद्यालय के क्रम संख्या 29 और उससे संबंधित प्रविष्टियों के सामने निम्नलिखित प्रविष्टियां जोड़ी जायेंगी नामतः—

1	2	3
डा. बाबा साहेब अम्बेडकर मराठवाड़ा विश्वविद्यालय, औरंगाबाद	दंत शल्य चिकित्सा में स्नातकोत्तर : निम्नलिखित दंत चिकित्सा अर्हताओं को तब मान्यता प्राप्त अर्हताएं माना जायेंगा जब ये	(i) एम. डी. एस. (ग्रोसल विद्वत्ति विज्ञान तथा सूक्ष्म जीव विज्ञान; मराठवाड़ा विश्वविद्यालय, औरंगाबाद

सरकारी दंत चिकित्सा कालेज और अस्पताल, (ii) एम डी एस (संरक्षी दंत चिकित्सा
औरंगाबाद के स्नातकोत्तर छात्रों के मामले में विज्ञान)
प्रत्येक विशेषज्ञता के सामने दर्शाई गई तिथि मराठवाड़ा विश्वविद्यालय, औरंगाबाद
को या उसके बाद प्रदान की गई हों :—

- | | |
|---|---|
| (i) मुख्य विकृति विज्ञान और सूक्ष्म जीव-
विज्ञान 11-12-1997 से | (iii) एम.डी.एस. (परिवर्त चिकित्सा
विज्ञान) |
| (ii) संरक्षी दंत चिकित्सा विज्ञान 19-05-1998 से | मराठवाड़ा विश्वविद्यालय, औरंगाबाद |
| (iii) परिवर्त चिकित्सा विज्ञान 19-05-1998 से | |

[सं. बी.-12018/4/98-पी.एम.एस.]

सी.एल. भाटिया, प्रवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

New Delhi, the 7th July, 1999

S.O. 2068.—In exercise of the powers conferred by sub-section (2) of section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consulting the Dental Council of India, hereby makes the following further amendment of Part-I of the Schedule to the said Act, namely :

In part-I of the said Schedule, against Serial No. 29 of Marathwada University and the entries relating thereto, the following entries shall be added namely :

1.	2.	3.
Dr. Baba Saheb Ambedkar Marthawada University, Aurangabad.	Master of Dental Surgery : The following dental qualifications shall be recognised qualifications when granted on or after the date indi- cated against each speciality in respect or post-graduate students of Govern- ment Dental College & Hospital, Aurangabad :—	(i) M.D.S. (Oral Pathology & Micro- biology) Marathwada, University, Aurangabad. (ii) MDS (Conservative Dentistry) Marthwada University, Aurangabad. (iii) MDS (Periodontics) Marathwada University Aurangabad.
	(i) Oral Pathology & Microbiology with effect from 11-12-1997.	
	(ii) Conservative Dentistry with effect from 19-5-1998.	
	(iii) Periodontics with effect from 19-5-1998.	

दिल्ली विकास प्राधिकरण

(मुख्य योजना अनुभाग)

मार्बजनिक सूचना

नई दिल्ली, 19 जुलाई, 1999

का.प्रा. 2069.—केन्द्रीय सरकार का दिल्ली मुख्य योजना 2001 में निम्नलिखित संशोधन करने का प्रस्ताव है, जिसे आम जनता की जानकारी के लिए एनद्द्वारा प्रकाशित किया जाता है। यदि किसी व्यक्ति को प्रस्तावित संशोधनों के संबंध में कोई आपत्ति/सुझाव देना हो तो वे अपनी आपत्तियाँ/सुझाव इस सूचना के जारी होने की तिथि से 30 दिन की अवधि के अन्दर आयुक्त एवं सचिव, दिल्ली विकास प्राधिकरण, विकास सदन "बी" ब्लॉक, आई.एन.ए., नई दिल्ली को लिखित रूप में भेज दें। आपत्ति/सुझाव देने वाले व्यक्ति को अपना नाम और पता भी देना चाहिए।

संशोधन :—

1. "जोन 'जी' के अन्तर्गत आने वाले 3.38 हेक्टेयर (8.37 एकड़) क्षेत्र, जो उत्तर में हस्तसाल गांव पूर्व में 30 मीटर मार्गाधिकार सड़क दक्षिण में विद्यमान जे.जे. कालोनी और 30 मीटर मार्गाधिकार सड़क और पश्चिम में हस्तसाल गांव से घिरा हुआ है, के भूमि उपयोग को "ग्रामीण उपयोग जोन" से "आवासीय (ट्रांसिट कैम्प)" में बदला जाना प्रस्तावित है।

(क) "जोन 'एफ' (दक्षिण दिल्ली-1), कालकाजी एक्सटेंशन के अन्तर्गत आने वाले 3.206 हेक्टेयर (7.94 एकड़) (पॉकेट 'ए') क्षेत्र, जो उत्तर और दक्षिण में 30 मीटर चौड़ी सड़क, पूर्व में 45 मीटर चौड़ी सड़क और पश्चिम में औद्योगिक टेनेमेंट्स से घिरा हुआ है, के भूमि उपयोग को "मनोरंजनात्मक" से "आवासीय" (ट्रांसिट कैम्प) में बदला जाना प्रस्तावित है।

(ख) जोन "एफ" (दक्षिण दिल्ली-1) कालकाजी एक्सटेंशन के अन्तर्गत आने वाले 8.772 हेक्टेयर (21.72 एकड़) (पॉकेट 'बी') क्षेत्र, जो दक्षिण में 30 मीटर चौड़ी सड़क, उत्तर और पश्चिम में विद्यमान निर्मित क्षेत्र और पूर्व में 45 मीटर चौड़ी सड़क से घिरा हुआ है, के भूमि उपयोग को "मनोरंजनात्मक" से "आवासीय" (ट्रांसिट कैम्प) में बदला जाना प्रस्तावित है।

2. प्रस्तावित संशोधनों को दर्शाने वाले नक्शे उपर्युक्त अवधि के दौरान निरीक्षण हेतु संयुक्त निदेशक कार्यालय, मुख्य योजना अनुभाग, छठी मंजिल विकास मीनार,

आई.पी.एस्टेट, नई दिल्ली में सभी कार्य-दिवसों को उपलब्ध रहेंगे।

[सं. : एफ. -20(7)/91-एम.पी.]

विश्व मोहन बंसल, आयुक्त एवं सचिव

DELHI DEVELOPMENT AUTHORITY

(Master Plan Section)

PUBLIC NOTICE

New Delhi, the 19th July, 1999

S.O. 2069.—The following modifications which the Central Government proposes to make in the Master Plan for Delhi-2001, are hereby published for public information. Any person having any objections/suggestions with respect to the proposed modifications may send the objections/suggestions in writing to the Commissioner-cum-Secretary, Delhi Development Authority, Vikas Sadan, 'B' Block, INA, New Delhi within a period of 30 days from the date of issue of this notice. The person making the objections/suggestions should also give his name and address.

MODIFICATIONS :

1. "The land use of an area measuring 3.38 ha. (8.37 acres) falling in zone 'G' bounded by village Hasthal in the North, road 30 M R/W in the East, existing JJ Colony and 30 M road R/W in the South and village Hasthal in the West, is proposed to be changed from 'rural use Zone' to 'residential' (Transit Camp)".

(a) "The land use of an area (Pocket 'A') measuring 3.206 ha. (7.94 acres) falling in zone 'F' (South Delhi-I) bounded 30 M wide road in the North & South 45 M wide road in the East and Industrial Tenements in the West is proposed to be changed from 'recreational' to 'residential' (Transit Camp) at Kalkaji Extn."

(b) "The land use of an area (Pocket 'B') measuring 8.772 ha. (21.72 acres) falling in zone 'F' (South Delhi-I) bounded by 30 M wide road in the South, existing built up area in the North and West and 45 M wide road in the East, is proposed to be changed from 'recreational' to 'residential' (Transit Camp) at Kalkaji Extn."

2. The plans indicating the proposed modifications will be available for inspection at the office of the Joint Director, Master Plan Section, 6th floor, Vikas Minar, IP Estate, New Delhi on all working days during the period referred above.

[No. F-20(7)/91-MP]

V. M. BANSAL, Commissioner-cum-Secy.

श्रम मंत्रालय

नई दिल्ली, 10-जून, 1999

का.मा. 2070.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कलकत्ता पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-6-99 को प्राप्त हुआ था।

[सं. एल-32011/5/87-डी-IV (ए), डी III (बी)]

बी. एम. डेविड, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 10th June, 1999

S.O. 2070.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Calcutta Port Trust and their workman, which was received by the Central Government on the 10-6-99.

[No. L-32011/5/87-D-IV(A)/DIII(B)]

B. M. DAVID, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA

Reference No. 15 of 1991

PARTIES:

Employers in relation to the management of Calcutta Port Trust, Calcutta.

AND

Their workmen.

PRESENT:

Mr. Justice A. K. Chakravarty, Presiding Officer.

APPEARANCE:

On behalf of Management.—Mr. G. Mukhopadhyay, Senior Labour Officer (IR) and Mr. M.K. Das, Industrial Relations Officer.

On behalf of workmen.—Mr. K.K. Banerjee, Working President of the Union.

STATE : West Bengal. INDUSTRY : Port & Dock.

AWARD

By Order No. L-32011/5/87-D-IV A/D.III(B) dated 29 May, 1991 the Central Government in exercise of its powers under section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Calcutta Port Trust, Calcutta in not conceding the following demands of the National Union of Waterfront Workers, Calcutta is justified:—

1. 78 Lift Drivers (List enclosed) engaged in Cargo Handling work in the Transit Sheds and Warehouse should be included in the Revised Incentive Scheme '83 and should be paid incentive allowance.

2. 18 Grassers of the CME's Department and G.M. ship Repaid Complex (list enclosed) should be recognised as Cl. III employees in lieu of Cl. IV and their pay scale should be revised from 575-806 to 670-1028 because of the revision of pay scales of the Pump Drivers.

3. The Pay scales of 17 CCDDs (list enclosed) should be upgraded and it should be at least more than the pay scales of Pump Drivers.

4. The Pay scales of the 4 Plant operators (list enclosed) should be revised as highly skilled Gr. II as has been done in case of Bascular Bridge operators. If not, to what relief the workers involved in each demands are entitled?"

List of Cargo Lift Drivers attached to the GRJ/NSD and K.P. Docks section of the Chief Mechanical Engineer's Dept.

Cargo Lift Drivers GRJ/NSD

Sl. No. Item No. Name

1. 354 Surendra Nath Chakraborty
2. 355 Sianand
3. 356 Rahini Kanta Seal
4. 357 Panchu Gopal Mondal
5. 358 Mono Mohan Dhar
6. 359 Subal Chandra Shaw
7. 360 Bhuban Mohan Paul
8. 361 Phani Bhushan Hait
9. 362 Abdul Gaffar
10. 363 Monindra Lal Das
11. 364 Vikram Middey
12. 365 Harendra Kumar Nath
13. 366 Bhaba Rajan Seal
14. 367 Sudan Ghughu
15. 368 Nanda Gopal Lall
16. 369 Indra Lal Kundu
17. 370 Shyamal Kanti Chakraborty
18. 371 Vac.
19. 372 Pran Gopal Nath
20. 373 Ram Manohar Ahir
21. 374 Pancham Hazam
22. 375 Panchu Gopal Das
23. 376 Pranab Kr. Singh
24. 377 Alluddin
25. 380 Sudarsan Adhikary
26. 381 Rakhal Ch. Mondal
27. 382 Shunkar Nath Banerjee
28. 383 Debendra Ch. Das
29. 384 Md. Uzar
30. 385 Lakshmi Narayan Sharma
31. 386 Bidu Bhushan Das
32. 387 Bijali Bhushan Mukherjee
33. 388 Fatick Ch. Bera
34. 389 Bechu Ram Kayal
35. 390 Bunilal Routh
36. 391 Peari Lal Dhanuk
37. 392 Nalini Kanta Manna
38. 393 Dharendra Nath Das
39. 394 Vac.
40. 395 Sankar Kr. Bose
41. 396 Bomkash Nanda
42. 397 Basanta Kumar Ranjit
43. 398 Sridam Ch. Mazumder
44. 399 Badal Ch. Das
45. 400 Tripathi Ghosal
46. 401 Shyamapada Roy
47. 402 James Kigga
48. 403 Jogendra Ch. Banik
49. 404 Hari Pada Dhar
50. 405 Paresch Ch. Rakshit

Sl. No.	Item No.	Name
51.	406	Rabindranath Sen
52.	407	Kanailal Chakravorty
53.	408	Dulari Jeswara
54.	409	Amal Kr. Mitra
55.	410	Jaydev Patwari
56.	411	Monoranjan Chakravorty
57.	412	Bimalendu Bhattacharjee
58.	413	Rambriksh Roy
59.	414	Nani Gopal Senl
60.	415	Bata Nath Sapui
61.	416	Bidyadhar Misra
62.	417	Vac.
63.	418	Dayananda Sarkar
64.	419	Bimal Kr. Dhara
65.	420	Dukhanti
66.	421	Kachi Ram Barick
67.	422	Karina Mohan Dey
68.	423	Bachan Singh
69.	424	Rampat
70.	425	Ganesh Ch. Mondal
Lift Driver (K.P.C. Section)		
71.	407	Tarapada Chakravorty
72.	N-1	Sreedar Das
73.	N-2	Proffulla Kr. Dutta
74.	N-3	M.D. Hafiz
75.	125	Sk. Alijan
76.	126	Balehari Das
77.	131	Murai Chakravorty
78.	137	Sriram

List of the Greasers working under the GRJ/NSC and K.P.C. Section of the Ship Repairing Complex Dept.

N.S.D.

1. HM 14 Shri Barsati
2. HM 15 Shri Nalm
3. EO 57 Shri Nabi
4. EO 58 Shri Radho
5. EO 59 Shri Banarashi
6. EO 60 Shri Rajpat
7. EO 61 Shri Panchu
8. EO 62 Shri Rashid
9. EM 27 Shri Rajmir
10. EM 28 Shri Bahir

K. P. D.

Sl. No.	Item No.	Name
11.	22A	Shri Monaranjan Ghosh
12.	20A	Shri Paresh Ch. Marick
13.	24A	Shri Debendra Nath Sarkar
14.	25A	Shri Ratan Kr. Banerjee
15.	19A	Shri Debandia N. Naskar
16.	21A	Shri Jibun Krishna Dey
17.	23A	Shri Badya Nath Debnath
18.	18A	Shri Paresh Ch. Samanta

List of the C.C.P.O. working at NSD Section of the S.R.C.'s Depart.

1. HO 19 Panchu
2. HO 20 Haldar
3. HO 33 Hari Ghosh
4. GO 14. Kamal
5. GO 15 Ramji
6. GO 16 Parbhu
7. EO 21 Bhulan

1	2	3
8.	EO 22	Noni
9.	EO 25	Ajit
10.	EO 26	Kinu
11.	EO 27	Bhanjoy
12.	EO 28	Lalit
13.	EO 29	Kuber
14.	EO 30	Sudhanso
15.	EO 31	Sibaran
16.	EO 32	Satto Ranjan
17.	EO 34	Munim Khan

from the post of asst Pump Drivers to Greaser in connection of demand No. 3

1. Debendra Nath Sarkar 24A
2. Paresh Chandra Marick 20A
3. Manaranjan Ghosh

Promoted as Elec Pump Driver on 26-6-67 Greaser w.e.f. 25-10-68

2. National Union of Waterfront Workers, Calcutta (in short the union) has raised this dispute in respect of their four demands as stated in the schedule of reference above. During the pendency of the proceeding, the union filed an application dated 4-2-1998 for ignoring Issues No. 3 and 4 that is the issue regarding Pump Driver and Plant Operators for the present in this reference and prayed for consideration of the other two issues involved in this reference. This Tribunal by its order dated 31-3-1998 passed the following order.

"No objection having been raised by the management in respect of the prayer of the union, the prayer of the union is allowed. The other two issues may be taken up for consideration and decision in this reference."

The Tribunal is accordingly to consider whether the 78 Lift Drivers engaged in cargo handling work should be paid incentive allowance and whether 18 Greasers of the CME's Department and G.M. Ship Repair Complex should be recognised as Class-III employees instead of Class-IV and their scale is to be revised accordingly.

3. Union's case in respect of the Lift Drivers is that there are 78 Lift Drivers engaged in the cargo handling works in the transit sheds and warehouse. It is alleged that though they are doing the same and similar job like the Crane Drivers, they have been denied the payment of incentive allowance. It is alleged that the nature of the job of the Crane Drivers is to carry out operation of the Cranes separately at proper rate of speed and also to carry out routine checking, clearing etc. of the crane machinery and to judge and report defects in the crane equipments. Regarding Lift Drivers it is stated that they operate all types of lift cargo and passenger and carry out their maintenance including routine checking. In case of warehouse, Lift Driver is required to operate case elevator. The management of the Calcutta Port Trust (in short CPT) having denied payment of incentive allowance to the Lift Drivers, the union has challenged such disparity as unjustified. Regarding Greasers it is stated that their revised pay scale is Rs. 585-840, while for Pump Drivers it was Rs. 575-805. The management of the CPT by an order of the Hon'ble Calcutta High Court had to make uniform pay scale for all Pump Drivers. In terms of the tripartite settlement dated 3-2-1986 the scale of pay of all the Pump Drivers were revised to Rs. 670-1020 retrospectively from 1-10-1957. The union alleges that that scale of pay of the Pump Driver is equivalent to that of CCPO. The said post of CCPO being the promotional post of Greaser and the post of Greaser being the promotional post of Pump Driver the Greasers are entitled to demand the upgradation of their post and the pay scale of CCPO.

4. The management of the CPT in its written statement has denied the allegations of the union in respect of the claim regarding incentive to the Lift Drivers and upgradation of the post of Greaser. It's case is that under the memorandum of settlement dated 6-2-1980 a revised incentive scheme

was introduced in the name and style of 'Revised Incentive Scheme 1980'. In that scheme there was no demand for inclusion of the Lift Driver (cargo) at transit sheds and warehouse. Subsequently another memorandum of settlement was arrived at on 24-3-1983 over revision of special allowance, special pay and incentive allowance. Thereafter an agreement was made on 14-4-1984 regarding revision of wages, liberalisation of the terms of employment of port and dock workers. In clause 15 of the said agreement it is stated that demand for revision of such scheme to the new categories will be discussed by the Port Trusts and Dock Labour Boards locally with the concerned unions. Pursuant to such agreement the revised scheme with regard to increase of incentive allowance was made applicable from 1-1-1984. As regards extension of such scheme to the new categories, no settlement could be arrived at. Thereafter on the expiry of the wage agreement dated 11-4-1984 another wage agreement was arrived at the level of Government of India, Ministry of Surface Transport on 12-6-1989 over the issue of wages and liberalisation of the terms of employment of the Port and Dock Workers. It was decided there that the issue regarding incentive allowance will be discussed and settled separately. The wage settlement dated 12-6-1989 was operative from 1-1-88 to 31-12-92. There too, the issue of inclusion of certain categories of workers like Lift Drivers (Cargo) under the Mechanical Engineering Dept. of the CPT in the incentive scheme could not be considered. It is further alleged that payment of incentive is an exclusive privilege of the management and the unions cannot call upon the management to pay incentive to any particular category of workers. It is also alleged that since Lift Drivers cannot be said to be cargo handling workers by the nature of their job that they were rightly excluded from receiving incentive allowance. The Ministry of Transport and Communication (Dept. of Transport) by their resolution dated 23-8-1958 constituted a committee for classification and categorisation of Class-III and Class-IV employees. Prior to the recommendation of the above committee the scales of pay of the Pump Drivers and Greasers attached to the Mechanical Engineering Dept. was same that is 35-50. That committee thereafter recommended following scales of pay for the Pump Drivers and Greasers under the Mechanical Engineering Dept.:

Pump Drivers :

(i) Rs. 35—50

(for the persons operating small non-diesel pumps).

(ii) Rs. 60—105

(for the persons operating diesel pumps of 40 HP or less)

Greasers : Rs. 40—60.

Some of the Pump Drivers operating small non-diesel pumps filed a writ petition before the Hon'ble Calcutta High Court and the Hon'ble High Court directed that all Pump Drivers should be treated in the same way and accordingly a memorandum of settlement was arrived at on 17th December, 1971 before the RLC(C), Calcutta allowing all the existing Pump Drivers on roll on 1st April, 1969 the scale of pay of Rs. 60—105. It is alleged that the Greaser's pay, however, remained the same and accordingly the question of upgradation of the Greasers in Class-III category and grant of Class-III scale of pay to them cannot arise. It is further alleged that there are 200 Greasers attached to the Mechanical Engineering Dept. and therefore satisfaction of the demands of only 18 of such Greasers, who are the concerned workman, will have wide repercussion and cannot be dealt with in isolation. It is further alleged that the sponsoring union, nor any other union never raised any demand for upgradation of the post of Greasers for the last 30 years and accordingly their demand is wholly unjustified. Management accordingly prayed for dismissal of the case of the union.

5. The union filed a rejoinder alleging, inter-alia, that there is no bar for inclusion of new category of employees in the revised incentive scheme as negotiation is still pending with the unions. It is also alleged that the union has every right to raise any dispute if there is any anomaly in the fixation of pay. Other allegation in the rejoinder are merely repetition of what is stated in the written statement of the union.

6. Heard Mr. Mukhopadhyay, representative of the management and Mr. Banerjee, representative of the union.

7. Each side has examined three witnesses and some documents were also produced by the parties.

8. I have already stated that though the reference was originally made for four types of workers, it was reduced to two types of workers on consent of the parties.

9. Union's case in respect of 78 Lift Drivers under issue No. 1 of the schedule is that they are entitled to be included in the revised incentive scheme of 1983 as they are engaged in the cargo handling work in the transit sheds and warehouse. The initial obstacle in the prayer of the Lift Drivers for their inclusion in the revised incentive scheme is that the scheme has come into effect by way of a settlement in which the sponsoring union was a party. Since the categories of employees who are to be included in the scheme have been specifically set forth in the settlement, the Tribunal cannot introduce anything which will be contrary to the settlement between the parties. The sponsoring union is bound by the terms of the settlement. If it had not included the concerned workman within the scheme, it cannot insist on any change in the terms of the settlement. It further appears that there were subsequent agreements between the parties and the last agreement in this matter took place on 27-7-1998. Even in the subsequent agreements this issue was never raised that the concerned 78 Lift Drivers are entitled to incentive allowance and they are to be included in the incentive scheme. The next point which stand in the way of the union in getting the relief is the settlement on wage revision and liberalisation of the terms and conditions of employment of the port and dock workers at the major ports dated 12-6-1989 marked Ext. M-1 in this case. It will appear from paragraph 4 of the said settlement that it will take effect from 1-1-1988 and remain operative for a period of 5 years from January 1988 to December 1992. The reference having been made in 1991, there cannot be any doubt that the parties are to be governed by this settlement. Mr. Mukhopadhyay, representative of the management drew my attention to paragraph 20.3 of the settlement which runs as follows: "The Federations/Union agree that during the currency of the Settlement no other demand involving additional financial implications will be raised." As stated above, the sponsoring union being a party to the settlement, it cannot now raise any demand involving additional financial implication. The claim of the union must fail on these grounds alone.

10. Apart from the points referred to above, the claim of the union for incentive allowance is based on the ground that the Crane Drivers handling cargo perform the same nature of job as the Lift Drivers. In other words, Mr. Banerjee, representative of the union prayed for relief on the ground of equal pay for equal work. The question is whether the works

of the Crane Drivers can be said to be equal with those of the Lift Drivers. WW-1, Kamrik Kai who is himself a Lift Driver has stated in his evidence that the cargo handling workers get the incentive allowance for handling cargos. He also admitted that he is not required to handle the cargo by hands. He admitted that cargo handling workers handle the cargo by hand and carry the same. Regarding the works of the Crane Drivers he stated that the Crane Drivers carry the goods from inside the vessel and unload the same from the vessel. MW-2, Partha Pratim Deb Barma an employee of the management deposed that the movement of cargos by the Lift Drivers have got nothing to do with the loading and unloading of ships at docks. He also stated that the movement of cargos for the purpose of lifting may be made in respect of the cargos left by the ships after the ships leave. It further appears from his evidence that excepting Lift Drivers all other workers connected with loading and unloading and carrying of the cargo getting incentive. The only difference between the Lift Drivers and others handling cargo is that the formers have to work only when the goods required to be carried upstairs by lift or to bring them down, while the latter are to do all types of work consequent upon loading and unloading of cargos. From the evidence mentioned above, it is clear that the duties of the Lift Drivers are merely to operate lift for the purpose of lifting cargos in the different floors of the godown. It further appears that doing of such work has got nothing to do with the movement of cargos from the ships. It appears that the payment of incentive allowance is restricted to only those persons who are directly involved in the movement of cargos from the ships. The function of the Lift Drivers being thus in no way related to the handling of cargos from the ships, there is a difference between the works performed by the Crane Drivers and the cargo handling workers with the Lift Drivers. There being thus difference in the nature of the works between the Lift Drivers and the Crane Drivers, there is reasonable difference for making the classification between the two and accordingly non-inclusion of the Lift Drivers in the revised incentive scheme cannot be challenged.

11. Coming to the question of the Greasers whose grievance is that they are not being upgraded to Class-III posts as CCPO, it was submitted by Mr. Mukhopadhyay that there is no reason behind such claim. It was submitted by him that the Pump Drivers originally belonged to two classes, one of section of them getting higher pay for operating big machine while the other getting lesser pay for operating smaller machine. On a writ petition against such practice having been filed, the Hon'ble Calcutta High Court found that there was no reason for difference between these two types of employees and their pay scale accordingly became uniform by way of raising the pay scale of those Pump

Drivers who were getting lesser pay. This position was acknowledged in the tripartite settlement and thereafter on the revision of pay they are getting higher pay scale which is meant for the Class-III employees. WW-2, Debendra Nath Sarkar was promoted to the post of Greaser from Pump Drivers who were getting lesser pay. Admittedly, the lower scale of pay of the Pump Drivers was lesser than that of the Greasers, but since such Pump Drivers started getting the same scale of pay as Pump Drivers getting higher pay that the Pump Drivers in fixation of their pay in the revised scale became Class-III employees. WW-3 who is a Greaser also stated that their main grievance is that the Pump Drivers who had been in lesser pay scale have become Class-III employees enjoying higher pay scale. He, however, admitted that the work of Greaser and that the Pump Driver are of different nature. Since there was increase in the pay and position of one type of worker that cannot, by itself, be a ground for increase in the pay and position of other type of worker. The peculiar circumstances in which that section of Pump Drivers who had been drawing lesser pay scale than the Greasers started getting higher pay being not applicable in the case of the Greasers, they cannot claim the same elevation on that analogy.

12. It will appear from the schedule of reference that the question posed before the Tribunal is whether the Greasers should be recognised as Class-III employees instead of Class-IV and whether their pay scales should be revised because of the revision of the pay scale of the Pump Drivers. The reference as framed means though there is revision of the pay scale of the Pump Drivers, there is no consequent revision of pay scale of the Greasers. From the evidence of WW-3 it will appear clearly that there is no grievance regarding revision of pay because that is made from time to time and that the revision of pay scales was made in respect of all the employees including the Pump Drivers and Greasers. The Settlement on wage revision produced in this case shows that there was no problem about revision of pay of the Greasers. Be that as it may, there is neither any justification, nor any right for claiming revision of pay at par with those of the Pump Drivers by the Greasers, has been proved.

13. So, upon consideration of the facts and circumstances, evidence on record and position of law in the matter, I find that the management of the Calcutta Port Trust was justified in not conceding to the demands of the 78 Lift Drivers regarding their inclusion in the revised incentive scheme and 18 Greasers of the CME's Department and G.M., Ship Repair Complex for their recognition as

Class-III employees and revision of their pay accordingly. The concerned workmen accordingly shall not be entitled to any relief in this case.

The reference is disposed of accordingly.
Calcutta, the 2nd June, 1999.

A. K. CHAKRAVARTY, Presiding Officer

नई दिल्ली, 28 जून, 1999

का. प्रा. 2071.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-43012/16/91-आई.आर. (विधि)]
बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th June, 1999

S.O. 2071.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharath Gold Mines Ltd., and their workmen, which was received by the Central Government on 28-6-99.

[No. L-43012/16/91-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Bangalore, the 22nd June, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C.R. No 12/92

I PARTY

Sri Samuel,
S/o Manickyam,
No. 145, E. T. Block,
Oorgaum, Kolar Gold Fields.

II PARTY

The Managing Director,
B. G. M. L.,
Dargam-563120,
Kolar Gold Fields.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/16/91-IR(Misc.) dated 07-01-1992 for adjudication on the following schedule :

SCHEDULE

"Whether the action taken by the management of Bharath Gold Mines Limited, Kolar Gold Fields in dismissing Sri Samuel S/o Sri Manickyam, Ticket No. 1817 from services from 01-10-1973 is justified? If not, what relief he is entitled to?"

2. The II party management dismissed the services of the workman Samuel w.e.f. 1-10-73 after conducting a Joint enquiry against this workman along with three others on the allegation of Theft, Fraud and Dishonesty, in connection with Company's Property namely Gold, at about 12.45 p.m. on 11-08-1973 that they are all jointly indulged in collecting GBQ pieces and filling them in gunny bag with dishonest intention.

3. The Enquiry Officer after recording the evidence of management witnesses came to the conclusion that the allegations made in the charge sheets are clearly established against all the four workman. The management accepted the report and dismissed all the four workman from Services.

4. The I party alone appears to have raised an Industrial Dispute after 1990. The I party filed his claim statement contending thereon, that the allegation of theft made against him was a false allegation and therefore the conclusion reached by the enquiry officer is not sustainable. He has also questioned the validity of domestic enquiry by making several allegations with regard to the procedure. The management in their counter statement justified the dismissal of the workman on the proved allegation of theft and they have also justified the validity of the domestic enquiry. They have mainly contended that this workman has committed laches as he has failed to raise the dispute within a reasonable time and therefore the claim of the I party should not be entertained and the reference is liable to be rejected.

5. Initially this Tribunal has taken up the issue as it relates to the validity of domestic enquiry as a preliminary point. After appreciating the evidence of both parties my predecessor passed an order on 13-08-1997. By this order this Tribunal held that the domestic enquiry was not conducted in accordance with rules and principles of natural justice. The management are provided to justify their action by placing independent evidence before this Tribunal.

6. Subsequent to the above order the workman filed an application IA I, for the payment of interim relief. Though it was opposed by management, by filing objection statement, in accordance with settled principles of law the management was directed to pay an interim relief of 50 per cent of this workman w.e.f. 01-09-1997.

7. After this order, a duty is casted to the second party to prove the allegation of theft by adducing evidence. The management failed to make any progress and therefore this Tribunal declined to grant any adjournments and proceeded to pass this Award.

8. The workman was dismissed from service on 1-10-1973 he has raised dispute in the year 1990. Admittedly there is a delay of 17 years. Though the I party contended in his claim statement that after the order of dismissal he has filed a suit before the Civil Court, after dismissal of his suit he has filed a Regular Appeal before the district court and the District Court passed an order in his favour than Management being aggrieved by the said order filed a Regular Second Appeal before the Hon'ble High Court of Karnataka, ultimately the RS came to be dismissed by giving a finding that the Civil Court have no jurisdiction to entertain the right of the workman as he has to enforce his Right under Industrial Disputes Act, the effect of such delay on the management required to be examined.

9. The learned advocate for the II party submitted that though the workman is claiming to get over the laches committed by him on the ground of filing suit before the wrong forum the same cannot be accepted in view of the fact that the Right of this workman is under Industrial Disputes Act, and in fact several workmen who are dismissed in the II party establishment have raised Industrial Dispute in identical cases.

10. Though we may appraise that this workman was agitating his right before wrong forum that alone cannot be treated as a ground to condone laches, as the management is not responsible for such laches. This workman has given his age as 56 years when he was examined before this Tribunal on 1-9-94. Therefore if we presume that the age of superannuation is 58 years the retirement is in the year 1996. If we take the date as retirement as 60 years his retirement would be in the year 1998. We cannot direct the management to allow them to work after a lapse of 22 years. Therefore the laches committed by the workman required to be considered in deciding this dispute. Non-enforcement of a right within a reasonable period will kill the very right of an individual. Only sympathy that can be shown against this workman is his valiant efforts to fight against the management from 1973 onwards.

11. Having regards to these facts and circumstances the question of reinstatement does not arise. It is proved that the I party has committed laches. However, by this alone we cannot deprive his right to have the compensation, by exercising discretion under Section 11A of the Industrial Disputes Act, I proceed to make the following Order.

ORDER

12. In lieu of reinstatement, the II party are directed to pay sum of Rs. 50,000 to this workman within 30 days from the date of the order. The reference is answered accordingly.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 जून, 1999

का.आ. 2072.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिवारण बंगलूर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[गं. एल-43012/18/91-आई.आर. (निबंध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th June, 1999

SO 2072—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharath Gold Mines Ltd., and their workman, which was received by the Central Government on 28-6-99

[No L-43012/18/91-IR(Misc.)]

B M DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated, 10th June, 1999

PRESENT

Justice R. Ramakrishna, Presiding Officer

C R No 49/92

I PARTY

Sri Krishnan,
since deceased rep by
(1) Pachaimal—wife

(2) Rajendran—son.

(3) Kalaivani—daughter.

(4) Manjula—daughter.

Residing at :

2/A, Govindapadi Street.

Vettuvanam,

Via Pallikonda,

Vellore District.

II PARTY

The Managing Director,
Bharath Gold Mines Ltd.,
Oorgaum,
K. G. P.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/18/91-IR (Misc.) dated 1-6-92 for adjudication on the following schedule :

"Whether the action taken by the management of BGML, KGF is justified in dismissing Sri Krishnan, a Machine Maistry, Nandydroog Mine, from service on 12-10-78 on charges of theft? If not, to what relief the workman is entitled?"

2. The I party was working as a Machine Maistry at Nandydroog Mine during 1978. He has been charged vide Show Cause Notice Ex. M1 dated 3-5-78 that at about 8.20 PM on 26-4-78 at Henry's search room when he was searched by the watchman Sri Jairam, he was found in unauthorised possession of a GBQ. Therefore, he has committed a misconduct coming under Standing Order 14(1)(ii)(d) of the Standing Orders. An enquiry was conducted by the Personnel Manager who has been examined as MW1. The Enquiry Officer after giving full opportunity as contemplated under law has conducted a domestic enquiry where 6 witnesses were examined for the management and the workman also examined 2 witnesses in addition to his evidence. The Enquiry Officer on the basis of the evidence both oral and documentary gave a finding against the workman. The Disciplinary Authority accepted the said finding and after giving opportunity to the workman to submit his explanation on the proposed punishment, has passed an Order of dismissal. An Appeal made to the Chairman-cum-Managing Director also came to be rejected.

3. The workman has raised an Industrial Dispute and the Government of India has sent a reference dated 1-6-92 which was received by this Tribunal on 4-6-92.

4. The I Party in the Claim Statement filed on 1-7-92 has questioned the validity of domestic enquiry and also the merits of the case presented by the management. He has stated that the Order of the Enquiry Officer was perverse and lacks material particulars and therefore the DA had no competency to propose the punishment of dismissal and the Appellate Authority has failed to exercise his jurisdiction by accepting the Order of the Disciplinary Authority.

5. Initially, we have examined the reason for referring this dispute during 1992 though the workman was dismissed from service w.e.f. 12-10-78. The I party has by ignorance of Law or wrong advice, filed a suit before the Learned Munsiff in O.S. No. 28/1979 questioning the Order of dismissal. Against the Order of Munsiff on dismissing his Suit, he has filed regular Appeal before the Civil Judge, Kolar. Thereafter he was advised to withdraw the Appeal. Again the said Order, he has filed a Civil Revision Petition No. 1546/90 before the Hon'ble High Court of Karnataka, Bangalore, and having advised that his remedy is before the Labour Court under Industrial Disputes Act, he raised a conciliation before the Assistant Labour Commissioner (C), KGF, which ultimately culminated in this reference. Therefore, I initially hold that there is no laches committed by this workman.

6. Though the preliminary issue was framed long back no progress has been made in the case. I attribute this to the carelessness shown by this Tribunal which has been amply supported by the Learned Advocates. A preliminary issue was framed on 9-2-93.

7. I recorded the evidence of the Enquiry Officer on 16-2-99 i.e. after the death of the concerned workman who is said to have been died on 10-4-98. His Legal representatives were brought on record vide an Order made by this Tribunal dated 7-1-99. In view of this, there is no contra evidence available in support of the workman as it regards to the validity of domestic enquiry. On the available material this Tribunal held that the procedure adopted by the Enquiry Officer was in accordance with Law.

8. Sri B. D. Kuttappa, a learned advocate who was representing this workman and later filed a Vakalatnama for legal representatives has mainly contended that there is a grave injustice committed by the management in dismissing this workman on insufficient materials and therefore this Tribunal shall appreciate the contention of the deceased workman that a case was planted against him on false accusation and also the Order of dismissal is quite dis-proportionate to the gravity of the offence, which requires the interference of this Tribunal both on facts and Law. The Learned Advocate also submitted that benevolent provisions contained in Section 11A is amply applicable to the facts and circumstance of this case.

9. As it is, in her submission, Smt. Sujatha, a learned advocate representing the II Party has contended that the offence committed by this workman is theft which is a very serious offence and therefore, the management having lost confidence, passed the Order of dismissal that does not require any interference.

10. It is travesty of justice if every allegation is looked on its grammatical meaning without appreciating the true facts involved in a case. There is a tendency that if a word 'theft' is used there is no escape for the person who is alleged of that offence. There is also a tendency that irrespective of the seriousness of the offence only one yardstick that should be adopted is making that person as guilty.

11. I have gone through the evidence of the witnesses who gave the evidence in support of the management in the domestic enquiry and the evidence does not repose any confidence to give a finding against the deceased workman.

12. At the relevant point of time, this workman has put in a great length of service with the II Party and was working as a Machine Maistry. The allegation was that he was keeping a GBQ piece weighing 4 gms worth Rs. 14.11 in the loin cloth. The concerned workman not only denied the accusation but he has also taken up a plea of fabricating a case on false accusation. He has given a detailed reply to the II Show Cause Notice as per Ex. M5 dated 20-8-78 contending there on that when he was about to take his boots for the purpose of search S. T. Watchman Sri Jayaram picked up a GBQ piece in question from near his boots and told him that the same had fallen down from the loin cloth. He has in detail excreted the evidence of 11 witnesses and the contradiction they have made in their evidence and also a supporting evidence in his favour by examining some witnesses on his behalf.

13. It is unfortunate that both the Disciplinary Authority and the Appellate Authority have failed to exercise their jurisdiction judiciously as the matter related to the question of imposing punishment. The Enquiry Officer also failed to distinguish the evidence legally to come to a conclusion of innocence against the workman.

14. We are clear in our mind that the Enquiry Officer lacks guts to give a report in favour of the workman as he is under the service of the management. I do not say for a moment that this fact should be taken for the advantage of the workman, but, the truth remains that the Enquiry Officers have not assessed the evidence properly due to lack of judicial background and also due to the tendency that they are a part of the Organisation.

15. Having regard to these facts and circumstances, this Tribunal is not agreeable either to the report of the Enquiry

Officer or the reasons expressed by the Disciplinary Authority in passing the Order of Dismissal which fact has been accepted by the Appellate Authority.

16. I am tempted to quote a well reasoned passage of his Lordship Justice Thakkar, the Lord Chief Justice of Gujarat High Court in Parama's case as follows:

"When difference categories of penalties can be imposed in respect of the alleged fault, one of which is dismissal from service, the disciplinary authority perforce is required to consult himself for selecting the most appropriate penalty from out of the range of penalties available that can be imposed, having regard to the nature, content and gravity of the default. Unless the disciplinary authority reaches the conclusion that having regard to the nature, content and magnitude of the fault committed by the employee concerned, it would be absolutely unsafe to retain him in service, the maximum penalty of dismissal cannot be imposed. If a lesser penalty can be imposed without seriously jeopardising the interest of the employer the disciplinary authority cannot impose the maximum penalty of dismissal from service. He is bound to ask the inner voice and rational faculty why a lesser penalty cannot be imposed.

It cannot be overlooked that by a large it is because the maximum penalty is imposed and total ruination stares one in the eyes that the employee concerned is obliged to approach the Court and avail of the costly and time-consuming machinery to challenge in desperation the Order passed by the disciplinary authority. If a lesser penalty was imposed, he might not have been obliged to take recourse to costly legal proceedings which result in loss of public time and also result in considerable hardship and misery to the employee concerned."

17. Having regard to these facts and circumstances I make the following Order :

ORDER

The II Party are not justified in dismissing the deceased workman Sri Krishnan w.e.f. 12-10-78. In view of this Order the concerned workman is eligible for reinstatement, continuity of service and back wages. Since the workman died on 10-4-98, the management shall calculate the No. of years he would have been continued if the Order of dismissal was not passed. Since the workman is no more, the benefit that will accrue in his favour if he was alive and retired from service on superannuation shall be paid to his Legal representatives in the following proportion.

The 1st Legal Representative Smt. Pachiammal, being wife of the deceased is entitled to get 55 per cent and legal representatives, Rajendran, son and Kalavani and Manjula, daughters of the deceased workman are entitled for 15 per cent each. The reference is answered accordingly.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 जून, 1999

का.भा. 2073.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में केन्द्रीय सरकार भारत सोल्ड मार्ट्स लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-43012/19/89-आई.आर. (विवाद)]

बी. एम. डेविड, डैस्क अधिकारी

New Delhi, the 28th June, 1999

S.O. 2073.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharath Gold Mines Ltd., and their workman, which was received by the Central Government on 28-6-99.

[No. L-43012/19/89-IR(Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 18th June, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

COMMON AWARD

C.R. No. 5/90

I PARTY

The President,
Bharath Gold Miners'
Association,
No. 545, Punjabi Line,
Oorgaum P.O.,
K.G.F.—563120.

II PARTY

The Managing Director,
Bharath Gold Mines Ltd.,
Oorgaum (P.O.),
K.G.F.—563120.

The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/19/89-IR(Misc.) dated 29-1-1990 for adjudication of the following schedule.

SCHEDULE

"Whether the dismissal of Sri Subramani, Rock Drill Operator, P.E. No. 124617 of Champion Reef Mine, Bharath Gold Mines Ltd., K.G.F. on charges of theft of employer's property is justified? If not, to what relief he is entitled to?"

C. R. No. 12/90

I PARTY

The President,
Bharath Gold Miners'
Association,
No. 545, Punjabi Line,
Oorgaum (PO)
K.G.F.—563120.

II PARTY

The Managing Director,
Bharat Gold Mines Ltd.,
Oorgaum (PO)
K.G.F.—563120.

The Central Government by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/21/89-IR(Misc.) dated 16-2-1990 for adjudication on the following schedule.

SCHEDULE

"Whether the dismissal of Sri Rajoo, Pack Well Maistry, P.E. No. 082238 of Champion Reef Mine, Bharath Gold Mines Ltd. on charges of theft of employer's property is justifiable? If not, to what relief is he entitled?"

(2) In C. R. 5/90 the concerned workman is Sri Subramani, Rock Drill Operator. The workman in C. R. 12/90 is one Sri Raju, Pack Wall Maistry. Both these workmen are dismissed from service by the II Party management after conducting a joint enquiry against them. Ex M15 is the finding of the Enquiry Officer in respect of these workmen. The Report of the Enquiry Officer was accepted by the Disciplinary Authority. After issuing a 2nd show cause notice and after receiving explanation to the 2nd show cause notice the Disciplinary Authority passed an Order dismissing the services of both the workmen. After the Order of dismissal, the gratuity of both these workmen were forfeited after giving a show cause notice.

(3) The charge against these workmen are that on 22-10-88, during 2nd shift at about 7.45 P.M. when the underground detectives Joginder Singh, Roshanlal, Natarajan and Balaram were on patrol duty, they saw Subramani sitting on the first turn table at 10 0th level OS borne shaft while Raju was cleaning the turn table and making preparation to powder the stuff. Subramani was holding the cloth bundle. When the detectives on patrol duty approached, Subramani turned back to hide the bundle which he was holding behind the pack wall. Both Raju and Subramani were caught red handed and prevented from running.

(4) In the domestic enquiry, the management has examined 12 witnesses to prove the allegation of theft. There appears to be no evidence placed by the workmen. A detailed explanation given by them independently marked as Ex. M18 and M19 shows their defence. They have also highlighted the evidence of management witnesses to show that they have not committed nor indulged in the process of committing theft.

(5) They have filed separate claim statement in each case reiterating their innocence in this offence. They have also questioned the validity of domestic enquiry. The II Party in their counter statement have justified the action taken by them in dismissing the services of these workmen after holding a domestic enquiry where all opportunities were given to these workmen to defend themselves. This Tribunal, initially, framed preliminary issues to give a finding on the validity of domestic enquiry. After examining both the workmen and the E.O. my predecessor in the office passed a common Order on 19-11-92. By this Order the enquiry held is not valid as the Principles of natural justice are not followed.

(6) Thereafter both the workmen filed applications for interim relief. This Tribunal has allowed the applications and directed the II Party to pay interim relief as directed in this Order.

(7) Consequent to the direction given to the management to prove the allegation of theft independently have examined 4 witnesses, MW2 to MW5.

(8) It is most disturbing that the learned advocate both for the management and for the workmen are showing ignorance of the progress made in this case. When the learned advocate for the II Party prayed for adjournment to examine some more witnesses, the same was refused and the learned advocates addressed arguments.

(9) The common feature of this case is not different from several cases instituted by the II Party against several workmen on the allegation of theft. The allegation against these workmen, as could be seen in the charge sheet, they were making preparation for gold stealing and they were found powdering the stuff when they have been caught by the Security and Detective staff. They have been dismissed from service under Standing Order No. 15(b)(34) read with 15(a)(7) with immediate effect and the effective date was 14-2-89. On going through the Order on the preliminary issue, the validity was set aside solely on the ground that the original Mahazar was not marked and the stolen material was not produced before the Enquiry Officer. Admittedly, a Police complaint was also given against these workmen and the cases were also registered for committing theft under Indian Penal Code and under Mines Act.

(10) The concerned workmen, though raised that the finding of the E.O. was perverse, they have not placed any material independently to prove the same. Since the validity of domestic enquiry was set aside along with that the report also goes. Therefore, the findings adduced before this Tribunal is significant to give a finding of guilt or innocence of these workmen. It should be noted at this juncture that the appreciation of evidence of the witnesses examined before this Tribunal shall be scrutinised with basic principles of Evidence Act and the same cannot be examined as it is being done in a Criminal case where the offence has to be proved beyond reasonable doubt.

(11) The witnesses now examined before this Tribunal consisted of MW2, K. Balaraman, G. D. Watchman, MW3, Meghanathan, G. D. Supervisor, Watch and Ward, MW4, Joginder Singh, S. T. Hawaldar, MW5 Natarejan, Watchman, Security department.

(12) The evidence of these witnesses were recorded during 1993 and 1994. These witnesses gave the evidence similar to what they have stated before the Enquiry Officer. Some of these witnesses were also examined before the Criminal Court.

(13) On a scrutiny of their evidence given in the examination-in-chief shows that on the alleged day of incident they were doing their security work inside the mines at various levels and during that time they have found these 2 workmen, indulging in the work stated in the chargesheets.

(14) Though a detailed cross-examination is made to these witnesses, nothing was elicited which will be contrary to what they have stated in the examination-in-chief.

(15) I have already pointed out that the appreciation of evidence for these matters would be not so much rigorous as it could be in appreciation of evidence when the punishment is imprisonment or fine or both.

(16) As contended by the learned advocate for the II Party, there is absolutely no enmity or interest in making false accusation against these workmen. The II Party witnesses who have been entrusted the job of protecting the property of the company were naturally interested to see that a culprit should not be allowed to commit theft and get away from it. If we look at the case solely in this angle, we cannot find any impediment in accepting the evidence of these witnesses without any reservation. Though we can view the case of these workmen sympathetically, such sympathy shall not be misplaced sympathy when the offence of theft is proved.

(17) Having regard to these facts and circumstances the II Party are offered to prove the allegation of theft against these workmen by placing independent evidences. Before parting with these disputes this Tribunal wanted to highlight the effect of an Order passed in C. R. 5/90 on 5-5-99 and 8-6-99.

On 5-5-99 the concerned workman Sri Subramanji made submission to this Tribunal that the II Party stopped payment of interim relief from July 1997. The learned advocate for the II Party submitted that the term of this workman will come to an end during July 1997 as he reaches the stage of superannuation. Therefore, the II Party stopped the payment of interim relief. This Court made an order directing the II Party to pay the interim relief inspite of the age of superannuation, as long as the case is pending before this Tribunal. It is also pointed that the case has not reached its finality due to the delay caused by the II Party in making progress in the case.

On the next day of hearing the learned advocate for the II Party filed 2 application with a prayer to withdraw the Order passed by this Tribunal and permit the II Party to stop the payment of interim relief. These applications, after hearing the learned advocate, have been dismissed in limine. By virtue of this Order the management are bound to pay the interim relief at the rate wanted by this Court from July 1997 till today. The concerned workman is at liberty to enforce this Order for payment.

(18) The II Party management are justified in dismissing the services of the above workmen on the allegation of theft. The reference is answered accordingly.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 जून, 1999

का.प्र. 2074.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत गोल्ड माइन्स लि. के प्रबंधन के संवत् नियोजकों और उनके कर्मचारियों के बीच, अनुरोध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-43012/19/91-आई.आर. (विविध)]

को० एम० डेविड, डेस्क अधिकारी

New Delhi, the 28th June, 1999

S.O. 2074.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharath Gold Mines Ltd., and their workman, which was received by the Central Government on 28-6-99.

[No. L-43012/19/91-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 11th June, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C.R. NO. 25/92

I PARTY

Sri Ramachandran,
Rep. by the President,
Bharath Gold Miners'
Association,
No. 545, Near Punjabi
Line, Oorgaum,
K. G. F.

II PARTY

The Managing Director,
BGML, Oorgaum,
K. G. F.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/19/91-I.R.(Misc.) dt. 13-2-92 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of BGML, KGF in dismissing Sri Ramachandra, PE No. 147434 Timberman C. R. Mine on charge of theft of employer's property on 10-8-88 is justified. If not to what relief the workman is entitled?"

2. This dispute is an off shoot to the dispute in C.R. No. 11/90. We have passed an Award in CR No. 11/90 on 21-1-99.

3. It is submitted by the learned Advocate for the I Party that a joint enquiry was conducted against the workman in C. R. No. 11/90 along with the workman concerned in this dispute.

4. My Predecessor, knowingly or unknowingly, has not taken into consideration to club both these disputes due to the fact that a joint enquiry was conducted. However, my learned predecessor gave a finding on the validity of domestic enquiry against the management. Since the said Order has become final at this stage of the case, a separate finding on the validity of domestic enquiry in this dispute will become superfluous. Therefore, this Tribunal directed the II Party with regard to holding evidence to prove the misconduct independently. When the II Party prayed time to lead evidence to prove the misconduct independently the prayer is rejected due to the fact that an award being passed in the companion case C. R. 11/90. Therefore, this Tribunal is compelled to pass an Award on merits of the case on available materials as it was done in C. R. 11/90.

5. Once we hold that the domestic enquiry is defective, the conclusion is that there is no enquiry and therefore any Order of dismissal is a nullity.

6. The II Party were given maximum opportunity to prove the misconduct in dependently, but, they have failed to perform the legal obligation on their part. In view of these circumstances, the following Order is made.

ORDER

The Order of the management in dismissing the services of this workman for alleged mis-conduct of theft w.e.f. 10-8-88 is not justified. Consequently, this workman is entitled for reinstatement or in the alternative he is entitled for 50 per cent of backwages from the date of his dismissal till the date of his reinstatement. If the workman has reached the age of superannuation, he is entitled to the above benefit of payment from the date of the dismissal till the date of superannuation.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 जन, 1999

का.आ. 2075:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के प्रबंधन के संवद्ध नियोजकों और उनके कर्मचारों के बीच, प्रबंध में निर्दिष्ट
2066 GI/99—3

औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[[सं. एल-43012/24/89-आई.आर. (विविध)]डी-III(बी)
बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th June, 1999

S.O. 2075.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharath Gold Mines Ltd., and their workman, which was received by the Central Government on the 28-6-99.

[No. L-43012/24/89-IR (Misc.) D-III (B)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, BANGALORE

Dated 17th June, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C. R. NO. 26/89

I PARTY

Sri K. Rajee,
(Since deceased
represented by L. Rs)

II PARTY

The Managing Director,
Bharath Gold Mines Ltd.,
Oorgaum,
K. G. F.-563 120

1. Smt. K. Kala,
Wife
2. Radha R.
Daughter
3. Priya,
Daughter
4. Kumaran,
Son
5. Velu,
Son

R/a No. 67, 'P' Block,
Champion Reef P. O.,
K. G. F.-563 120.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-sec. 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/24/89-D. III(B) dt. 16-3-1989 for adjudication on the following schedule.

SCHEDULE

"Is the management of GBML justified in dismissing Sri K. Rajee, General labour from service w.e.f. 26-7-83. If not, to what relief the workman is entitled?"

2. This is also one such dispute which lost its seriousness due to long lapse of time in deciding. The concerned workman also died on 22-12-95, who was admittedly dismissed from service w.e.f. 26-7-83. The legal representatives are now continuing this dispute.

3. The charge against the deceased workman was again theft of gold piece which was found in his person when he was searched on 15-12-82 at about 0940 P.M. The contents of gold said to be 1.175 gms valued at Rs. 149.45 Ps. The reply of the workman being not satisfactory, a domestic enquiry was conducted. The Enquiry Officer after assessing the evidence placed by the management gave a finding against this workman. A Police complaint was also filed on the allegation of theft and the workman was accused in C. C. No. 297/83. The said case was decided on 5-6-87. He was acquitted of the charges by a Judgment dt. 5-6-87. The material object, i.e. the gold piece was returned to the management.

4. This Tribunal initially proceeded to give a finding on the validity of domestic enquiry as the same was questioned by the workman. After contest my Predecessor gave a finding vide Order dt. 12-4-91. By this order the domestic enquiry was set aside. The management was permitted to adduce evidence and justify its action.

5. The II Party examined MW2 and MW3 to prove the allegation of theft. From 1993, as the Order sheet discloses there is absolutely no progress made. Infact, the learned Advocates had no knowledge as to what progress is made in the case. We have brought to their notice the examination of 2 more witnesses by the management. By that time the workman was already dead. Further adjournment sought by the II Party was refused and arguments were heard. The workman has not denied that a gold piece was in his possession when he was searched on 15-12-82. In his reply to the charge-sheet marked as Ex. M3, he has said that the said gold negget piece might have fallen in his pocket while he was loading the quartz and while he was carrying scattered quartz pieces in baskets to fill up the containers.

6. I have gone through the findings of the E. O. Ex. M6. The Enquiry Officer has recorded the evidence of no. of witnesses and based his conclusion both on the oral and documentary evidence. The domestic enquiry was set aside solely on the ground that the material object was not identified by the witnesses. Admittedly the material object was in the custody

of Criminal Court. There is no contention by the I Party that the findings of the E. O. is a perverse order. If a domestic enquiry is set aside on the basis of procedural irregularities, unless it is proved that there was no opportunity given for placing material on merits there cannot be any impediment to accept the Report. Anyhow, the Report also disregarded in view of the domestic enquiry being set aside, we have to appreciate the findings recorded to prove this mis-conduct.

7. MW2 is Sri Subramaniam, who was working as an Officer, Watch and Ward, when this incident took place. He has stated in detail as to the events that took place on that day after the workman was caught with gold negget in his pocket. The contention of the defence that it might have been planted in his pocket cannot be accepted in view of the reply given by the workman that it might have accidentally fallen in his pocket when he was working in carrying quartz pieces which contain gold. Infact, the evidence of Shashiram, MW2 is also to this effect. The evidence of both the witnesses are corroborated with each other. Infact, it was elicited in the cross-examination that these witnesses identify the gold negget when it was shown to them in the Criminal trial and it was marked ad MO-1.

8. The evidence of these 2 witnesses prima-facie proves that the workman was in possession of the alleged gold piece in his pocket. Since the workman at the earliest point of time, through Ex. M3 has stated that this piece might have been found in his pocket, as it might have accidentally fallen when he was doing the said work, cannot be ignored altogether. In the domestic enquiry this defence was also considered and since the appreciation of the evidence is altogether different from the appreciation that will be made by a Criminal Court, this finding was given. Therefore, on the basis of this finding an order of dismissal made by the management cannot be viewed as unreasonable.

9. When this dispute came up for consideration, the learned advocate for the II Party, on a suggestion made by this Court earlier has informed that the management is prepared to settle this dispute by paying Rs. 50,000/-. Possibly, the decline of this offer by the wife of the deceased workman may be due to wrong advice given to her.

10. Since we are able to find an element of doubt in the allegation of theft and also by taking into consideration the offer made by the management the following order is made.

ORDER

The order of dismissal made by the II Party on the basis of the report of the Enquiry Officer which was made as early as 1983 is justified. However, taking into consideration that the defence of the workman was not appreciated properly and also workman fought this litigation and ultimately died in the year 1995 and his legal representatives are unaware of the legal jourgans, taking into consideration the benevolent provisions of Section 11A, the II Party are directed to pay a sum of Rs. 50,000 to the wife of the deceased workman. This amount is exclusively to the wife of the deceased and the other Legal representatives are not entitled to have any share.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on the 17th day of June, 1999).

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 जून, 1999

का.भा. 2076:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार न्यू मंगलोर पोर्ट ट्रस्ट के प्रबंधन के संबंध निरोधकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-45012/3/98-आई.आर. (विवाद)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th June, 1999

S.O. 2076.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of New Mangalore Port Trust and their workman, which was received by the Central Government on 28-6-99.

[No. L-45012/3/98-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 22nd June, 1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C. R. NO. 7/99

I PARTY

Sri N. V. Thomas,
S/o N. T. Varghese,
TRIISUR.

II PARTY

The Chairman,
New Mangalore Port Trust,
Panambur,
MANGALORE-10.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-45012/3/98/IR(M) dt. 11-1-99 for adjudication on the following schedule.

"Whether the action of the management of New Mangalore Port Trust, Panambur in dismissing Sri N. V. Thomas, Helper, Workshop w.e.f. 29-4-1991 is justified? If not, to what relief the workman is entitled to?"

2. After receipt of this reference this Tribunal issued notices to both parties. The II Party appeared through an advocate Smt. Indu R. Raj. The notice issued to the I Party workman by RPAD was returned with a postal share 'expired'.

3. Since this dispute is raised by this workman in his individual capacity and also he has been dismissed from service w.e.f. 29-4-91, it is not known when this workman expired.

4. In view of these circumstances, this reference is closed as abated.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 जून, 1999

का.भा. 2077:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत गोल्ड माइन्स लि. के प्रबंधन के संबंध निरोधकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-43012/10/91-आई.आर. (विवाद)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th June, 1999

S.O. 2077.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharath Gold Mines Ltd., and their workman, which was received by the Central Government on 28-6-99.

[No. L-43012/10/91-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 10th June, 1999

PRESENT :

Justice R. Ramakrishna,
Presiding Officer.

C.R. NO. 52/1991

I PARTY

The Secretary,
BGM Employees Union.
(CITU)
Marikuppam,
K.G.F.—563119.

II PARTY

The Managing Director,
Bharath Gold Mines Ltd.,
Oorgaum,
K.G.F.-563120.

AWARD

1. The Central Government by exercising the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. 42012/10/91-IR (Misc) dated 7-8-91 for adjudication on the following Schedule.

"Whether the action taken by the management of BGMI., KGF in dismissing Sri Poongan, PTM Attendant, T. No. 097179 from services w.e.f. 24-12-1988 on charges of theft of GBQ pieces is justified or not? If not, to what relief the workman is entitled?"

2. The cause of the I Party is emposed by the Secretary, BGM Employees Union, KGF. The II Party dismissed the services of the concerned workman Sri Poongan, w.e.f. 24-12-88 after giving a finding in domestic enquiry in favour of the management vide order dated 21-12-98. Several contentions raised by the workman with regard to validity of domestic enquiry was rejected. The workman was provided an opportunity to prove that the Report of the Enquiry Officer, on the basis of which the management dismissed him from service is a perverse report and therefore any orders passed on such report are legally unsustainable. In this background, we have to discuss the merits of the case. This workman was charged for having committed theft of GBQ pieces and powder and hiding the same behind PTM Vibrator Switch box on 23-9-88 at about 8-12 AM. The hiding of a packet containing this material was noticed by a watchman, Sri Taj Mohammed bearing token No. 368. The workman was allowed to work even after this alleged incident and only after 3.00 PM he was summoned to the main gate and there he has been informed of the events that took place at 8.15 AM and thereafter all other formalities were fulfilled and he was kept under suspension. The workman gave a reply to the accusation of charge as per Ex M2, but the management have not accepted the explanation and thereby they have conducted a domestic enquiry. It was elicited in the evidence of Sri Umashankar that the sealed packet was examined for valuation purposes and it contained 24 gms out of which 5.48 gms gold contents were there and the value was calculated at Rs. 1753.60.

3. The workman has strongly refuted the charge made against him and infact he has taken defence that the said Sri Taj Mohammed has unnecessarily foisted false case and therefore his previous unblemished service should be taken into consideration before implicating him in this alleged false charge and render justice to him.

4. We have heard the learned advocates for the workman and the management. The contention of the workman is that he has not been caught red handed for having committed the offence alleged in the Show-Cause Notice and further he was allowed to work the whole day and only at 3.00 PM he has been hauled up by the Authorities which itself gives a conclusion that any man of even ordinary prudence will not accept such an allegation.

5. Of course, the contention of the learned advocate for the management is that whenever there is an allegation of theft the punishment would be dismissal as it is a very serious offence.

6. As it regards to the question of perversity, we have to examine the circumstances of this case within the legal framework. It is undisputed that Sri Taj Mohammed is the only witness, who has given a direct evidence with regard to this mis conduct. All other evidences came into existence after the alleged report made by Sri Taj Mohammed.

7. It is undisputed that on the fateful day, this workman was working at Boiler packing No. 3 PTM and on the direction of Mr. Udaikumar (one of the witness) he stopped the work and went to start 1 PTM. After starting No. 1 PTM again he went to 3 PTM for repair. After repairing he did other attendant works elsewhere. While he was doing that duty, a watchman came and asked him to come to the main gate. When he went there thinking somebody has come to visit him the Hawaldar had a packet in his hand and said that this is the man, who concealed this packet in the morning. Then they have threatened him to accept the said allegation otherwise he would be handed over to the police. He has refused to accept. Then after completion of all the formalities he was issued with a Show Cause Notice.

8. Sri Taj Mohammed was examined as a I Party witness. He has stated in his evidence that he saw the movement of the workman who was found suspicious and therefore he followed him until he saw that this workman was keeping some-

thing on the switch board and then leaving that place. Thereafter, he collected the plastic paper containing GBQ. Then he has brought the same to the notice of the duty Hawaldar and thereafter some other persons also came there and inspected the contents. Infact, the evidence of the other witnesses are the events that took place after the said disclosure. The workman cross-examined Sri Taj Mohammed and other witnesses, after their statements were recorded by the Enquiry Officer.

Q : Was there any other workman working in PRM section at that time ?

A : Nobody.

Q : I say that there were 15 workmen working in PRM section as per allocation on that day ? I tell you are telling lie ?

A : No worker was there in the section. You are telling lie.

Q : As you stated there was 7 to 8 feet distance between you and the switch board. Why you have not caught me red handed when I was keeping the packet on the switch board ?

A : Since you have kept the bundle on the witch board and immediately you have started your work at 3 PTM I have not caught you red handed.

Q : As per your statement that I was working at 3 PTM why you have not caught me there itself ?

A : Since you have kept the bundle on the switch board and immediately you started working at 3 PTM I have not caught you red handed.

Q : You stated that you have ascertained my name as Poongan. How you ascertained my name ?

A : Your name has been ascertained by Sri H. U. Ramachandraiah.

Cross examination of Sri Uday Kumar, Foreman.

Q : What opinion do you have on me of work ?

A : You are working under me since last 6 months and you are an obedient worker.

Q : Do you know about this case ?

A : I was not known when you were apprehended by the watchman, but, came to know about the case when GFO told me.

Q : How many workers were there on that shift in PTM ?

A : Nearly 15 workers.

Cross examination of Sri Uma Shankar

Q : How many workers were there in the PTM in the 1st shift on that day ?

A : Approximately 15.

9. In addition to the above evidence the workman also gave a Statement in the Form of evidence in detail as to how a false case was foisted against him.

10. The Enquiry Officer has not at all looked into the Statement made by the workman and also the answer elicited in the cross-examination of several witnesses to show that as many as 15 workers were working in that section on the relevant day.

According to Taj Mohammed there was nobody in that section except the workman and himself.

11. On scrutiny of the evidence it is crystal clear that the Enquiry Officer has not taken these facts into consideration. It is not a case of catching the workman red handed. It cannot be attributed as a case of theft, but, it can be said it is a preparation for theft. The action of the workman recorded

by the management as a mis-conduct under S.O. 15 B 34. S.O. 15 considers un-authorised entry into working place or any prohibited places as a mis-conduct. Under S.O. 34 theft or attempt of theft, receiving or selling or passing unauthorisedly mining materials is a mis-conduct.

12. In this case, both the ingredients are absent. The term 'attempt' does not apply at all. When this being the state of affairs, both the Disciplinary Authority and the Appellate Authority have failed to apply their mind in accepting a perverse report of the Enquiry Officer and then proceeding to dismiss the workman without even considering the statement made by him. They have also not considered the unblemished service of 35 years rendered by this workman in the Company.

13. In view of the above circumstances, since the report of the Enquiry Officer is a perverse Order, any action taken on the said Order is a nullity under Law.

14. In view of these circumstances the following Order is made.

ORDER

The II Party are not justified in dismissing the services of this workman w.e.f. 24-12-1988. Consequent to this conclusion, the I Party is entitled for reinstatement to the post he was holding with continuity of service and backwages at 75%. In the event this workman has reached the age of superannuation, the backwages at 75% with other benefits should be paid to him as if he has continued in the service.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 जून, 1999.

का.आ. 2078:—औद्योगिक विवाद अधिनियम, 1947 1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-43012/14/89-आई.आर. (विविध)]
बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th June, 1999

S.O. 2078.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharath Gold Mines Ltd., and their workman, which was received by the Central Government on 28-6-99.

[No. L-43012/14/89-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated, 17th June, 1999

PRESENT:

Justice R. Ramakrishna, Presiding Officer,

C. R. No. 92/89

I PARTY

Sri Perumal M. S., Workman.

Since deceased represented by L. Rs:

(1) Smt. Pushpamma,
Wife.

(2) Sri Gowrisankar,
Son.

(3) Sri Ivamuragan,
Son.

(4) Kum. Bhavani,
Daughter.

(5) Sri Karthikavan,
Son.

(6) Kum. Chitra,
Daughter.
R/o ChamaraJanagar,
Maskam (PO),
Andersonpet,
Kolar Gold Fields.

II PARTY

The Managing Director,
Bharath Gold Mines Ltd.,
Oorgaum,
Kolar Gold Fields.

AWARD

1. The Central Government in exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/14/89-IR(Misc.) dated 7-12-1989 for adjudication on the following schedule:

SCHEDULE

"Whether the action taken by the management of BGML in retiring Sri M. S. Perumal from service w.e.f. 1-1-86 is justified? If not, to what relief the workman is entitled?"

2. The I Party raised this dispute questioning the competency of the II Party company in superannuating his services w.e.f. 1-1-86 though his date of birth furnished to the Company was 13-6-30 instead of 16-12-27.

3. This workman died on 21-3-97. His legal representatives are brought on record on 8-1-99. Before the death of this workman his evidence was recorded in examination-in-chief. It was on 18-10-94, due to the absence of the advocate for II Party the cross-examination was deferred. The management witness was examined earlier i.e. on 26-6-91 and he was also cross-examined. Due to this factual situation, the learned advocates were directed to address the arguments and after hearing the arguments we are passing this Award.

4. The brief contention raised by the deceased workman is that his father was working in the II Party mines. Due to the premature retirement of his father on medical ground the deceased joined the services of the Company w.e.f. 16-12-48. At that time, he was a student and later he has completed his SSLC in the year 1956.

5. The main contention of the deceased is that his date of birth was given to the II Party as 13-6-30 as he was only 18 years of age. During 1970 he was promoted as Time Office Clerk and he started working at the surface. At that time the management appears to have opened a new Service Book wherein without taking into consideration the date of birth given by him as 13-6-30, they have taken into consideration the date of his entry to the service i.e. 16-12-48 and subtracted 21 years from that date to arrive at 16-12-37. The 2nd contention of the deceased was that he being appointed as a general labour to work in the underground, the age of superannuation is 60 years and not 58 years as decided by the II Party and even on that ground his superannuation was premature.

6. The further contention raised by the deceased is that the fact of wrong entry of the date of birth came to his notice when the company issued a notice that he will be retired from service w.e.f. 1-1-86 as he attains the age of 58 years. He has relied on a Circular dated 31-3-79 to claim that the age of superannuation was 60 years. He has filed a Writ Petition before the Hon'ble High Court of Karnataka

and obtained an interim Order staying the Order of superannuation. Since the Order was vacated after sometime he raised an Industrial Dispute.

7. His further contention is that if the Company retires him 2 years earlier to the date of superannuation the same amounts to retrenchment. Since, the II Party have not followed the procedure prescribed for retrenchment the Order of superannuation becomes ineffective.

8. The II Party have strongly disputed that this workman was born on 13-6-30. They have also disputed that this date of birth was furnished at the time of his appointment. According to the II Party, this workman has joined the services as a general labour on 16-12-48, declaring his age as 21 years. Therefore the management obliged to retire him from service w.e.f. 1-1-86.

9. With regard to the contention of the workman that the age of superannuation was 60 years was also not accepted on the ground that the Circular referred by the workman applies to the workmen who were working as on 28-3-70 only. Since the services of the deceased were transferred to the surface w.e.f. 16-12-70 his status would remain as an underground workman and consequently his age of superannuation was only 58 years.

10. Since there was no scope for framing any additional issues my learned predecessors have proceeded to record the evidence on merits during 1971 and 1974. The workman to support his contention has examined himself as WW1 and he got marked 5 documents in support of his contention. The management have examined a Personnel Manager as MW1 who gave the evidence on the basis of the records maintained by the Company as it regards to the deceased workman.

11. The evidence of MW1 is mainly based on the records maintained by the II Party in respect of the deceased. In his, examination-in-chief, he has relied on the documents produced by them to record the date of birth as 16-12-37. They have relied on Ex. M1, the service card of the I Party Ex. M2, the personnel record of the I Party of his previous service, Ex. M3 the P.F. Form. The further contention is this workman has not made any efforts to change his date of birth in accordance with the opportunity given to the workmen under 2 notifications Ex. M4 and Ex. M5. Therefore, the contention is, the management in retiring the services of I Party on 1-1-86 is justified.

12. The deceased workman in his evidence recorded on 18-10-94 has stated in his evidence that his father was also working in mines and his date of birth is 13-6-30. He has studied upto 5th standard at St. Mary's Boys' School, K.G.F. and Ex. W1 is the Certificate. He passed SSLC in 1956 in Government Boys' High School, KGF as per W2, markcard. His date of birth as shown in Ex. W2 is also 13-6-30. He did his B.A. as an external candidate from Mysore University. Ex. W3 is the identity card issued by the University which also shows the date of birth as 13-6-30.

13. His further evidence is, he joined the mines on 16-12-48 as a general labour on compassionate ground as his father was medically unfit. He completed his SSLC when he was in service. He has brought to the notice of the management of having passed SSLC and produced the certificate. It was entered in the Service Card. At the time of entry into service, he has not given his age as 21 years. He was a P.F. contributor and Ex. W4 is the PF nomination form which was accepted by the management. Ex. W5 is the endorsement issued by the Municipality, K.G.F. when he applied for his birth certificate.

14. In 1970, he was promoted as Desk Clerk which is a surface job. In 1970 he produced all the certificates pertaining to his qualification. When he got superannuation notice he came to know about the mistake. He submitted representation to change his age, but, the management did not correct. By filing a Writ Petition the Order of superannuation is stayed and he has worked for 7 months. According to him he should have retired at the age of 60.

15. On a scrutiny of cross-examination of MW1, it is elicited that the present BGML came into existence from 1-4-72 after the same was handed over to by the earlier Company. According to him Ex. M1 is the service card

where his entry into service is noted as 16-12-48, and his age at that time was 21 years. Ex. M2 is the personnel record of the deceased maintained by the KGMU. Ex. M3 is a nomination form where the date of birth is entered as 13-6-1930.

16. If we analyse this dispute in a proper perspective it is evident that some of the records maintained by the previous company were not available when this workman was transferred to work at time office. Therefore, the particulars of age was taken from Ex. M2, where it is written as 21 years on 16-12-48. There is also an endorsement that the deceased passed his SSLC and the date of leaving school is 1956. In the nomination form, Ex. M3 his date of birth was written as 13-6-30. This nomination form is dt. 14-10-77. These facts are corroborated by the documents produced by this workman from Ex. W1 to Ex. W5. Ex. W1 is a birth certificate issued by St. Mary's Boys' High School showing the date of birth as 13-6-30 and the year of leaving school as 1947-48. Ex. W2 is SSLC markcard dated 7-8-56 showing the date of birth as 13-6-30. Ex. W4 is the original of M3, PF Nomination form where his date of birth was again given as 13-6-30.

17. All these circumstances goes to show that the II Party have not recorded the date of birth as indicated in these documents, when he was transferred to work in the time office. Therefore, the deceased was justified in not asking to change his date of birth as per the notification Ex. M4 and M5. The facts and circumstances discussed above gives rise to a conclusion that though the deceased workman gave his date of birth as 13-6-30 the change occurred when he was transferred to work at surface where a fresh service record was created on the ground that some of the records were found missing. Therefore, the deceased workman joined on 16-12-48 and his age taken as 21 years is not correct. If we take the date of birth given by him, which according to him is the correct date of birth. He was 18 years of age when he joined the Company.

18. Though a change in the date of birth at this length of time will affect the service conditions, the circumstances under which such change require to be interfered with by the Courts are to be examined. It is not the case of the deceased workman that he has given wrong date of birth which requires change when the II Party issued notification during 1963 and 1964. His case is that the II Party proceeded with a wrong assumption that he was 21 years of age at the time of joining the company without any basis and therefore he has to make a representation to the management when they have issued notice fixing date for his superannuation. Therefore, this does not amount to passing an Order as it is being done in a Civil Court where the date of birth recorded in SSLC markcard was found different than the date of birth alleged to have been correct according to the person. Therefore, I am of the clear view that the management have erred in fixing his age as 21 years on the date of his appointment instead of fixing the same as 13-6-30.

19. As it regards to the contention of the workman that in the ordinary course, his service would have been extended to 60 years is without any merits in view of the circular dated 31-3-79. For the reasons stated above, I make the following Order.

ORDER

The II Party was not justified in retiring the deceased workman w.e.f. 1-1-86. The management is directed to calculate 58 years from 13-6-30, the correct date of birth of this workman. Since the workman is not alive and he cannot be reinstated also the monetary benefits accruing in his favour if he had retired from service on the calculation of 58 years from 13-6-30 shall be paid to the legal representatives.

The entire amount shall be paid to the wife of the deceased, Smt. Pushpamma. The other Legal representatives are not entitled to this benefit.

(Dictated to the Stenographer, corrected and signed by me on the 17th day of June, 1999.)

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 जून, 1999

का.प्र. 2079:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के प्रबंधन के संबंध नियोक्ता और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-43012/15/91-आई.प्रार. (विनिध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 23th June, 1999

S.O. 2079:—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharath Gold Mines Ltd., and their workman, which was received by the Central Government on the 28-6-99.

[No. L-43012/15/91-JR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, BANGALORE

Dated 22nd June, 1999

PRESENT:

Justice R. Ramakrishna, Presiding Officer.

C. R. No. 19/92

I PARTY

Shri Mohammed Sadiq,
C/o Sri N. Sunder Rajan,
Senior Vice-President,
BGML Labour Association,
No. 43, NJ Block Oorgaum P.O.,
K. G. F.

II PARTY

The Managing Director,
B.G.M.L.
Oorgaum,
K.G.F.-563120.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section (1) and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/15/91-JR(Misc.) dated 11-02-1992 for adjudication on the following schedule.

SCHEDULE

"Whether the action of the management of BGML, KGF in dismissing Shri Mohammed Sadique, General Labour from service w.e.f. 19-03-1991 is justified? If not to what relief is the workman entitled to?"

2. The Ist Party workman was working as a General Labourer, was dismissed from service w.e.f. 19-03-1991 after conducting a Domestic Enquiry.

3. The allegation against the I party was remaining absent unauthorisedly with prior permission for about 42 1/4 day from January 1989 to August 1990. The enquiry officer has issued necessary notices to participate in the enquiry. The workman though, he has received the notice has not

appeared before the Enquiry Officer. In view of this situation the Enquiry Officer treated the workman ex-parte and conducted the enquiry. Since the materials placed by the management Prima-Facie proved the allegation of unauthorised absence, he has submitted his report that the allegations are proved.

4. The disciplinary authority accepted the findings and passed an Order of Termination.

5. Since this workman raised an Industrial Dispute, the Government of India referred the same for adjudication

6. Initially this Tribunal gave a finding on the validity of domestic enquiry. The workman who appears to have been agitated by the Order of enquiry officer has not appeared before this Tribunal to substantiate his allegations that the Domestic Enquiry was defective. This Tribunal accepted the evidence of enquiry officer and gave a finding in favour of Management.

7. Subsequent to this Order, the concerned workman and the advocate remained absent continuously. Since the materials, Prima Facie disclosed that the workman remained absent without prior permission and also he has failed to prove that the order of termination was not in accordance with law, we have to accept the case made out by the Management without any reservations.

8. In view of the facts and circumstances discussed above the management are justified in dismissing the I party workman w.e.f. 19-03-1991. The reference is answered accordingly.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 जून, 1999

का.प्र. 2080:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के प्रबंधन के संबंध नियोक्ता और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-43012/15/94-आई.प्रार. (विनिध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th June, 1999

S.O. 2080:—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Ltd., and their workman, which was received by the Central Government on the 28-6-99.

[No. L-43012/15/94-JR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 11th June, 1999

PRESENT:

Justice R. Ramakrishna, Presiding Officer.

C.R. No. 32/1997

I PARTY

The President,
Bharat Gold Miners Association,
Oorgaum Post,
Kolar Gold Fields.

II PARTY

The Managing Director,
Bharath Gold Mines Ltd.,
Oorgaum Post,
Kolar Gold Fields.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/15/94-IR (Misc.) dated 1-5-95 for adjudication on the following schedule.

SCHEDULE

"Whether the management of Bharath Gold Mines Ltd. is justified in proposing the retirement of Sri Chinnadurai, P. E. No. 009720 w.e.f. 31-12-1994 in absence of the service book for the period from 23-8-1936 to 30-9-1972? If not, to what relief the workman is entitled to?"

2. The I Party, on his own saying, joined the II Party company in the year 1956. Originally, he was working in the underground. In 1972 he was transferred to work in the workshop as helper and also as a Service workman.

3. The II Party by taking his date of birth as 1936 fixed the date for his superannuation which is to take effect from 1-1-95. A notice to this effect was given to the workman by the personnel department on 1-8-94.

4. Thereafter, the workman disputed the date of birth recorded by the II Party. The first ground was that he was born during 1938, the same was wrongly entered as 1936. The ground taken to show that it is a wrong entry, the workman contended that after his transfer his service records were not sent to the place of transfer and therefore separate record book was opened by wrongly showing his date of birth as 1936.

5. The II Party strongly refuted the allegations made by the I Party and contended that as a practice prevailed in the erstwhile BGML, an English company was running these mines and at that time the mode of recruitment was looking into the physical fitness of a person and then ascertaining his age depending on the development of the body, if no proof of date of birth is given. Likewise, the age of this workman was assessed as 20 years and therefore his date of birth was taken as 1936. The other contention is that the I Party has not questioned the date of birth entered at the time of his appointment to a great length of period and he is making a false claim when he is about to be superannuated due to completion of 58 years of age.

6. This tribunal has not framed any preliminary issues as the parties are directed to lead their evidence on the schedule to the points of dispute.

7. If we read the points of schedule the action of the management is questioned on the ground that there was absence of Service Book from 23-8-56 to 30-9-72.

8. The I Party in his evidence has stated that he worked continuously for a period of 38 years. He applied for voluntary retirement on 1-7-94 thinking he had 3 years of service.

9. The II Party refused to consider the application for voluntary retirement. According to him the date of birth entered as 31-12-1936 in Ex. W2 is not correct and according to him his date of birth is 5-12-1933.

10. As against this evidence, the evidence of the management is that as per Ex. W2, his service card, the date of birth is written as 1936 on the declaration of the I Party. It was also signed by him. The said date of birth was also incorporated in the PF nomination form. This also is signed by the party. In the B Register his age was taken as 20 years. The I Party has signed this extract also. In the statutory Register, the Register maintained under Factories Act, in Ex. M4 his year of birth was taken as 1936.

11. The I Party is contending his date of birth as 5-12-36 on the strength of Ex. W1. This document is a xerox copy. It does not bear the signature of any authority. Ex. W2 is another service record which is signed by this workman where against age of birth it is shown as 1936 and the date of birth it is shown as 31-12-1936. There is also mention that the I Party was engaged on 23-8-56. In view of this basic differences, the contention of the I Party that this document was produced before the Civil Court in a Suit for declaration cannot be accepted. The I Party cannot take advantage of non-production of Service card when he has joined the service to work in the underground. This fact is not supported by any independent documents such as date of birth declared before the authorities and if he has studied, the School certificates.

12. In fact, the II Party, after the undertaking was taken over by the Government of India from John Taylor Company, issued 2 circulars dated 7-12-60 (Ex. M1) and date 3-4-64 allowing the workmen to make their representations for change in date of birth if they so desired, in the event that the date of birth was wrongly entered by the previous Company.

13. The I Party is aware of these things, but, he never attempted to get the date of birth rectified at that time. It may be said that he has been transferred during 1972 and then only his date of birth was changed to 1936 from 1938. Even then it was open for him to question the date of birth entered in Ex. M2, but, he has failed to do so. Ex. M1 and M4 are the documents showing his date of birth as 1936.

14. The Law is well settled that if the date of birth entered at the time of entry into service is found to be incorrect, a rectification to that effect shall be made within a reasonable period. A person cannot resort to change his date of birth after a long lapse of time. Even such change effected in a Civil Suit, it is the discretion of the employer to accept it or not. (1990 Lab L.C. 750).

15. In fact, in the case of Kuppuraj Vs. BGML ILR 1992 Kar 554, the law laid down is that if any injunctive relief is given to a workman who files a Suit 30 years after his date of birth is entered such relief cannot be granted.

16. In fact, in Steel Authority of India Ltd. Vs. Industrial Court, Indore, 1987 LAB IC 57, a learned Judge of the Madhya Pradesh High Court held that if employees are allowed to change their date of birth in such a manner at any point of time at their whim, it would amount to interference with the terms of the contract of service when they have not made any representation when the circular was issued in this regard.

17. Having regard to these facts and circumstances, merely the II Party are not able to produce the service card maintained in the underground mines, the I Party cannot take advantage of it, without his making out a case that his date of birth was 1938.

18. Having regard to these facts and circumstances, the reference is rejected.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 जून, 1999

क्र.आ. 2081.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. मदन माईन्स आफ मै. हिन्दुस्तान जिक लि. के प्रबंधन के संघर्ष नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, उदयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एन-43012/7/97-आई.आर. (विविध)]

बी. एम. डेविड, रैंक अधिकारी

New Delhi, the 28th June, 1999

S.O. 2081.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Udaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Maton Mines of M/s. Hindustan Zinc Ltd., and their workman, which was received by the Central Government on 28-6-99.

[No. L-43012/7/97-JR(Misc.)]
B. M. DAVID, Desk Officer

अनुबंध

औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर
(राजस्थान)

पीठासीन अधिकारी : श्री श्रीधर पुरोहित, आर.एच.जे.एम.
प्रकरण संख्या

5 सन् 97

श्री शोभाग सिंह पुत्र श्री भूर सिंह कानावत, उदयपुर

—प्रार्थी

बनाम

खान अधीक्षक मट्टन माईन्स, हिन्दुस्तान जिंक लि.

उदयपुर —विपक्षी

उपस्थित :

श्री प्रदीप पालीवाल, प्रार्थी की ओर से ।

श्री बी. एन. गुप्ता, विपक्षी की ओर से ।

दिनांक : 9-6-1999

निर्णय

भारत सरकार के श्रम मंत्रालय द्वारा अपनी अधिसूचना क्रमांक एल-43012/7/97-आई आर. (मिल). दिनांक 30-6-97 द्वारा निम्न विवाद इस अधिकरण को वास्ते अभिलिखित प्रेषित किया गया है ।

“Whether the action of the management of M/s. Maton Mines of M/s. Hindustan Zinc Ltd. in terminating the service of Shri Shobhag Singh Kanawat, Tracer, is justified? If not to what relief the workman is entitled?”

उपरोक्त विवाद के सम्बंध में प्रार्थी अभिक द्वारा मांगपत्र प्रस्तुत किया गया है । मांगपत्र में प्रार्थी द्वारा यह अभिकथित किया गया है कि वह ट्रेसर की योग्यता रखने वाला दक्ष कर्मचारी है तथा उसकी नियुक्ति दिनांक 28-10-89 को ट्रेसर के पद पर रु. 1520/- की वेतन शृंखला में देय भत्तों सहित विपक्षी-नियोजक द्वारा की गई थी, परन्तु प्रार्थी को यह नियुक्ति बगैर यथोचित साक्षात्कार की प्रक्रिया आदि अपनाये की गई थी इसलिये उसकी सेवा 16-1-90 को समाप्त की गई एवं पुनः नियोजन विभाग के माध्यम से नाम प्राप्त होने पर वीस व्यक्तियों को साक्षात्कार हेतु आमंत्रित किया गया और उनको साक्षात्कार के आधार पर चयन प्रक्रिया अपनाते हुये प्रार्थी को नियमित रूप से 14-3-90 से नियुक्ति प्रदान की गई । हालांकि प्रार्थी 28-12-89 से 14-3-90 तक भी निरन्तर कार्य करता रही

इस प्रकार प्रार्थी ने विपक्षी के अधीन 28-12-89 से लगभग चार वर्ष की अवधि की सेवा संतोषप्रद तरीके से प्रदान की है एवं उसके विरुद्ध कोई शिकायत अवघा आरोप नहीं होते हुए भी उसकी सेवा 31-10-93 को समाप्त कर दी गई । प्रार्थी के अनुसार विपक्षी-नियोजक के स्थाई आदेश के अन्तर्गत दो वर्ष की सेवा के पश्चात् कर्मकार को स्थाई करने का प्रावधान है क्योंकि स्थाई आदेश के अन्तर्गत दो वर्ष का परीक्षा काल निर्धारित है । प्रार्थी ने अपने मांगपत्र में यह भी अभिकथित किया है कि चूंकि उसने विपक्षी नियोजक से सेवा में स्थाई किये जाने की मांग की थी इसलिए विपक्षी ने प्रार्थी से छुटकारा पाने के उद्देश्य से उसे चार वर्षों की संतोषप्रद सेवा होने के बावजूब बगैर कोई कारण एवं बगैर औद्योगिक विवाद अधिनियम के प्रावधान की पालना किये उसे सेवा से पृथक् कर दिया गया है तथा नैसर्गिक न्याय के सभी सिद्धांतों की अवहेलना की गई है जिससे प्रार्थी का जीवनयापन करना मुश्किल हो गया है । प्रार्थी के अनुसार जुलाई, 92 तक सेवा में नियुक्त होने वाले श्रमिकों को स्थाई करने के निर्देश होते हुए भी विपक्षी ने उन आदेशों की पालना नहीं करके अन्य श्रमिकों को पुनर्नियुक्ति दे दी गई है जबकि प्रार्थी-श्रमिक के पक्ष में ऐसा कोई अनुलोप नहीं दिया गया है । इसलिये प्रार्थी-श्रमिक द्वारा पुनः सेवा में बहाली एवं सेवा की निरन्तरता एवं सेवा के सभी देय लाभ प्राप्त करने की तथा बाद व्यय की राशि के रूप में दस हजार रुपये प्राप्त करने की हस्तक्षुब्ध की गई है ।

विपक्षी-नियोजक की ओर से जवाब प्रस्तुत किया जाकर प्रार्थी के मांगपत्र को अस्वीकार किया गया है । विपक्षी के अनुसार प्रार्थी को 1989 में तीन माह के लिये पूर्णरूप से अस्थाई तौर पर नियुक्ति दी गई थी तथा प्रार्थी ने नियुक्ति पत्र में उल्लिखित भर्तों को स्वीकार करते हुए 24-12-89 को उपस्थिति दी थी । विपक्षी के अनुसार 24-1-90 को जिला रोजगार अधिकारी को आवश्यकता के आधार पर पत्र भेजकर वांछित योग्यता वाले उम्मीदवार की सूची मंगवाई गई तथा रोजगार कार्यालय उदयपुर ने ट्रेसर पद के लिये 14 व्यक्तियों के नाम पूर्ण अस्थाई नियुक्ति हेतु भेजे तथा विपक्षी संस्थान द्वारा साक्षात्कार लिया जाकर प्रार्थी को पुनः तीन माह के लिये नियुक्ति दी गई तथा तीन माह के पश्चात् प्रार्थी की सेवाएं 15-6-90 को समाप्त की गई, परन्तु कार्य की आवश्यकता को मद्दे नजर रखते हुए प्रार्थी को समय-समय पर नियुक्ति दी गई थी । विपक्षी-नियोजक के अनुसार परीक्षा काल का प्रावधान केवल नियमित रूप से नियुक्त कर्मचारियों के लिये है तथा अस्थाई रूप से नियुक्त कर्मकार के लिये परीक्षा काल का कोई प्रावधान नहीं है, क्योंकि अस्थाई तौर पर नियोजित कर्मकार एक निश्चित अवधि के लिये नियोजित किया जाता है एवं उसकी अवधि समाप्त होने पर उस कर्मकार की सेवाएं स्वतः ही समाप्त हो जाती है । विपक्षी के अनुसार प्रार्थी को जब अंतिम बार दिनांक 24-7-93 को अस्थाई नियुक्ति का प्रस्ताव भेजा गया तब भी उसमें स्पष्ट उल्लेख था कि उसे

तीन माह के लिये अस्थाई तौर पर नियोजित किया जा रहा है। इसलिये प्रार्थी को सेवा से पृथक् नहीं किया गया है बल्कि अस्थाई नियुक्ति की अवधि समाप्त होने के कारण 26-10-93 को उसकी सेवाएं समाप्त हो गई। इस प्रकार विपक्षी-नियोजक के अनुसार प्रार्थी के विरुद्ध नैसर्गिक न्याय के सिद्धान्त की अवहेलना नहीं की गई है बल्कि सेवा अवधि समाप्त होने के कारण उसकी सेवा स्वतः ही समाप्त हो गई। इसलिये प्रार्थी औद्योगिक विवाद अधिनियम के अन्तर्गत कुछ भी लाभ प्राप्त करने का अधिकारी नहीं है क्योंकि प्रार्थी का सेवा से पृथक्करण औद्योगिक विवाद अधिनियम के अन्तर्गत छठनी की परिभाषा में नहीं आता है।

पक्षकार के उपरोक्त अभिव्यक्तियों के आधार पर इस प्रकरण के निस्तारण हेतु निम्न वाद बिन्दु विरचित किये जाते हैं।

1. क्या मैसर्स मटून माईन्स हिन्दुस्तान जिक लि. द्वारा शोभाग सिंह कानावत ट्रेसर की सेवाएं समाप्त करना उचित एवं वैध है?

2. यदि श्री शोभाग सिंह कानावत ट्रेसर का सेवा से पृथक्करण उचित एवं वैध नहीं है तो प्रार्थी क्या राहत पाने का अधिकारी है?

उपरोक्त वाद बिन्दु के समर्थन में प्रार्थी स्वयं का शपथपत्र प्रस्तुत कर साक्ष्य में पेश हुआ है तथा विपक्षी नियोजक की ओर से श्री मांगी लाल बारबर उप प्रबन्धक कार्मिक को परीक्षित किया गया है।

बहुस सुनी गई और पल्लावली का अवलोकन किया गया तथा दोनों पक्षों द्वारा प्रस्तुत अभिलेखीय साक्ष्य एवं प्रार्थी के द्वारा प्रस्तुत लिखित बहुस का भी अवलोकन किया गया। उपरोक्त विरचित किये गये वाद बिन्दुओं का निस्तारण निम्न प्रकार से किया जाता है।

वाद बिन्दु संख्या एक :

विपक्षी-नियोजक की ओर से परीक्षित हुये गवाह श्री मांगी लाल बारबर उप प्रबन्धक कार्मिक ने अपने बयान में बताया है कि प्रार्थी द्वारा 24-12-89 को प्रथम बार नियुक्ति दी गई और उसे पूर्ण अस्थाई तौर पर ट्रेसर के पद पर आवश्यकता होने के आधार पर रखा गया था और फिर जिला नियोजन अधिकारी उदयपुर से नाम मंगवाकर साक्षात्कार के पश्चात् पुनः 14-3-90 को तीन माह के लिये अस्थाई नियुक्ति दी गई। तत्पश्चात् प्रार्थी का कार्यकाल उसे बाद में 19-6-90 को प्रदर्श-8 द्वारा नियुक्ति देकर बढ़ाया गया एवं प्रार्थी के पक्ष में प्रदर्श-9 से लगायत प्रदर्श-29 द्वारा तीन-तीन माह के लिये नियुक्ति दी गई। विपक्षी के अनुसार सेवा अवधि समाप्त होने पर प्रार्थी का सेवा से पृथक्करण हुआ है जो कि छठनी की परिभाषा में नहीं आता है। विपक्षी ने अपने बयान में यह भी बताया है कि संस्थान में आज ट्रेसर का पद रिक्त नहीं है

और न किसी की नियुक्ति की गई है और जब भी कोई पद की आवश्यकता होगी तो प्रार्थी को अवश्य विचार किया जायेगा। इस गवाह ने अपने प्रतिपरीक्षण में यह स्वीकार किया है कि प्रार्थी की हाजरी जौन कार्ड के आधार पर हाजरी रजिस्टर में भरी जाती थी। अपने प्रतिपरीक्षण में इस गवाह ने यह बताया है कि मटून माईन्स पर अस्थाई आदेश लागू है और चूंकि उसके पास अस्थाई प्रकृति का काम था इसलिये प्रार्थी की नियुक्ति अस्थाई आधार पर की परन्तु वह नहीं बता सकता कि किस कानून के तहत प्रार्थी की नियुक्ति अस्थाई तौर पर की गई। विपक्षी के इस गवाह द्वारा यह स्वीकार किया गया है कि प्रार्थी का साक्षात्कार केवल एक बार ही लिया गया था और केवल एक बार ही प्रार्थी का नाम नियोजन कार्यालय से मंगवाया गया था। इस गवाह ने अपने प्रतिपरीक्षण में यह भी स्वीकार किया है कि सुनील कोठारी का स्थानान्तरण मटून से देवारी कर दिया गया था तथा वह आदित्य पुरोहित और रविन्द्र को नहीं जानता तथा वह यह नहीं बता सकता कि इन लोगों की पदोन्नति के बाद ट्रेसर के चार पद रिक्त पड़े हों। अपने प्रतिपरीक्षण के अंत में इस गवाह ने यह भी स्वीकार किया है कि कुछ लोग जो 1992 से उनके यहां कार्यरत थे उनकी पुनर्नियुक्ति समय-समय पर मुख्यालय द्वारा नीति निर्धारण के आधार पर की गई है। परन्तु इन संबंध में नीति संबंधी आदेश की उसे जानकारी नहीं है। प्रार्थी के विरुद्ध कोई घरेलू जांच अथवा अनुशासनात्मक कार्यवाही विचाराधीन होने के बारे में इस गवाह को कोई जानकारी होना नहीं बताया है।

इसी बिन्दु पर प्रार्थी ने अपने बयान में बताया है कि उसके द्वारा 24-12-89 से 21-10-93 तक निरन्तर संतोषप्रद सेवाएं विपक्षी के अधीन दी गई हैं तथा उसने इस बाबत अपने हस्ताक्षर अन्य कर्मकारों के साथ हाजरी रजिस्टर में किये हैं, परन्तु उसके आवेदन के बावजूद हाजरी रजिस्टर विपक्षी द्वारा प्रस्तुत नहीं किया गया है। इस गवाह ने शपथ पर यह बयान दिया है कि उसके विरुद्ध कोई शिकायत अथवा आरोप नहीं है और इसी बिन्दु पर उससे कोई प्रतिपरीक्षण नहीं किया गया है। अपने प्रतिपरीक्षण में इस गवाह ने इस बात को गलत बताया है कि उसकी नियुक्ति अस्थाई तौर पर तीन माह के लिये की गई थी। क्योंकि वह अन्य नियमित कर्मचारियों के साथ हाजरी रजिस्टर में दस्तखत करता था तथा नगैर किसी अवरोध के उसने अपनी निरन्तर सेवा विपक्षी के अधीन दी थी।

उपरोक्त साक्ष्य विवेचन के आधार पर तथा प्रदर्श-1 से प्रदर्श-29 के अवलोकन से यह स्पष्ट है कि प्रार्थी की नियुक्ति ट्रेसर के पद पर जिला रोजगार कार्यालय से नाम मंगवाकर साक्षात्कार के आधार पर की गई थी तथा यह साक्षात्कार केवल एक बार ही लिया गया था जबकि उसके पक्ष में बार-बार अस्थाई नियुक्ति आदेश के शीर्षक के अन्तर्गत तीन माह की अवधि के आदेश जारी किये गये जबकि नगैर किसी विघ्न के उसने 24-12-89 से 31-10-93

तक ट्रेसर के पद पर अपनी सेवाएं दी है। हालांकि प्रदर्श-29 के पश्चात् उसकी सेवाएं नहीं बढ़ाई गई जिसके आधार पर उसकी सेवाएं 26-10-93 को समाप्त होती है।

उपरोक्त अविवादित तथ्यात्मक स्थिति के आधार पर यह स्पष्ट है कि प्रार्थी-श्रमिक ट्रेसर के पद पर योग्यता रखने वाला कर्मकार है जिसका चयन विधिवत तरीके से जिला नियोजन अधिकारी, जयपुर से नाम मंगवाकर साक्षात्कार के आधार पर किया गया था, परन्तु उसकी सेवाएं अलग-अलग आदेशों द्वारा तीन माह के लिये आदेश जारी करके बढ़ाई गई और प्रत्येक बार अलग-अलग नियुक्ति आदेश जारी किये गये जबकि प्रार्थी 24-12-89 से 26-10-93 तक निरन्तर सेवा में रहा तथा उसका चयन केवल एक ही बार साक्षात्कार लेकर किया गया। इस बिन्दु पर विपक्षी नियोजक के विद्वान अधिवक्ता का यह तर्क है कि इस प्रकार सेवा समाप्ति को छूटनी की परिभाषा में औद्योगिक विवाद अधिनियम की धारा 2/ओ०ओ०/बी०बी०/के अन्तर्गत नहीं लिया जाना चाहिए और इस कारण सेवा अवधि समाप्त होने पर स्वतः ही श्रमिक की सेवा समाप्त हुई है, इसलिये उनके द्वारा औद्योगिक विवाद अधिनियम की धारा 25 एफ. की पालना किया जाना आवश्यक नहीं था। मैं विपक्षी के विद्वान अधिवक्ता के इस तर्क से सहमत नहीं हूँ क्योंकि अभिलेख के आधार पर एवं विपक्षी के गवाह एवं प्रार्थी के बयान के आधार पर यह स्पष्ट है कि एक बार जिला नियोजन अधिकारी से नाम मंगवाकर साक्षात्कार के आधार पर चयन करने के पश्चात् प्रार्थी श्रमिक की सेवा निरन्तर रही तथा प्रार्थी के पक्ष में प्रत्येक बार तीन-तीन माह का अस्थायी सेवा का आदेश जारी करके केवल मात्र प्रार्थी के अधिकारों को हनन करने का असफल प्रयास था क्योंकि माननीय राजस्थान उच्च न्यायालय की खण्डपीठ द्वारा दिये गये विनिश्चय महर्षि दयानन्द सरस्वती विश्वविद्यालय, अजमेर बनाम अशोक कुमार सांखला 1994(1) आर. एल. आर. पेज-609 एवं जगदीश प्रसाद शर्मा बनाम जयपुर डेवलपमेंट अथोरिटी जयपुर 1996(2) डब्ल्यू. एल. सी. पेज-562 के अनुसार इस प्रकार के सेवा से पृथकीकरण को सेवा अवधि समाप्त होने का आधार बनाकर सेवा से पृथकीकरण नहीं किया जा सकता जब तक कि औद्योगिक विवाद अधिनियम की धारा 25 एफ. की पालना नहीं की जाती।

उपरोक्त वर्णित माननीय राजस्थान उच्च न्यायालय की खण्डपीठ के विनिश्चय के संबंधित अंश निम्न प्रकार से उद्धृत किये जाते हैं।

- (a) Industrial Disputes Act, 1947 S. 2(oo) & 25F Retrenchment petitioner were appointed as adhoc employees (LDCs) in University for fixed period. Their tenure extended from time to time—They completed 240 days—Even after expiry of stipulated tenure in last appointment/extension letter they were allowed to be continued in services. Their services were brought to an end but neither

or afflux of the tenure not in pursuance of any stipulation in appointment letter Held, it amounted to retrenchment such termination was not as a result of non-renewal of contract of employment and as such does not tell within exemption under clause (bb) of 2(oo)-(bb) Act. Therefore, compliance of S. 25F was mandatory. For non-compliance of provision of S. 25F, the retrenchment was illegal void, nonest and non-existent :—

इसी प्रकार माननीय राजस्थान उच्च न्यायालय द्वारा अपने विनिश्चय डब्ल्यू. एल. सी. 1996(2) जगदीश प्रसाद शर्मा बनाम जयपुर डेवलपमेंट अथोरिटी, जयपुर में निम्न सिद्धांत प्रतिपादित किया गया है।

Industrial Dispute Act, 1947, Ss. 2(oo)(bb) 25-F, Rajasthan High Court ordinance, 1949. S. 18; Constitution of India, Arts. 16, 226 Termination of appointment. Appointment initially made temporarily and once extended. Extended period coming to end followed by termination, writ petition against termination dismissed by Single Judge. Appeal against decision of Single Judge. Order of appointment stipulating termination notice. Appointment not to be construed for fixed period. Section 2(oo)(bb) not attracted termination, yet, brought about in contravention of S. 25-F petitioner not gainfully employed during interognum. Reinstatement ordered with full back wages. Amount of backwages to carry interest @ 15% p.a. unless paid by 31-5-1990.

उपरोक्त तथ्यात्मक एवं कानूनी विवेचन के आधार पर मैं इस निष्कर्ष पर पहुंचा हूँ कि प्रार्थी का सेवा से पृथकीकरण औद्योगिक विवाद अधिनियम की धारा 25 एफ. के उल्लंघन के कारण अनुचित एवं अवैध तथा विधि की दृष्टि में शुन्य है। अतः यह वाद बिन्दु प्रार्थी के पक्ष में एवं विपक्षी नियोजक के विरुद्ध निस्तारित किया जाता है।

वाद बिन्दु संख्या दो :—

चूंकि वाद बिन्दु संख्या एक प्रार्थी के पक्ष में एवं विपक्षी नियोजक के विरुद्ध निस्तारित किया जा चुका है और चूंकि प्रार्थी का सेवा से पृथकीकरण विधि की दृष्टि में शुन्य घोषित किया जा चुका है। इसलिये माननीय राजस्थान उच्च न्यायालय की खण्डपीठ के उपरोक्त वर्णित नवीनतम विनिश्चय 1996 के निर्णय जगदीश प्रसाद शर्मा बनाम जयपुर डेवलपमेंट अथोरिटी, जयपुर के आधार पर प्रार्थी को पुनः सेवा में बहाली का अधिकारी समझा जाता है और चूंकि प्रार्थी कहीं भी रोजगार में नहीं था इसलिये उसे 27-10-93 से पुनः सेवा में बहाली तक पूरा बकाया वेतन 15 प्रतिशत वार्षिक की दर से ब्याज सहित विपक्षी-नियोजक द्वारा देय होगा। इसके अतिरिक्त

प्रार्थी, विपक्षी-नियोजक से दो हजार रुपये वाद व्यय के रूप में प्राप्त करने का अधिकारी होगा।

उपरोक्त वाद बिन्दु संख्या एक व दो के विनिश्चय के आधार पर प्रार्थी-श्रमिक के पक्ष में एवं विपक्षी-नियोजक के विरुद्ध निम्न आशय का पंचाट पारित किया जाता है।

पंचाट

उपरोक्त विवेचन के आधार पर प्रार्थी-श्रमिक के पक्ष में एवं विपक्षी नियोजक के विरुद्ध इस आशय का पंचाट पारित किया जाता है कि प्रार्थी, विपक्षी-नियोजक के अधीन पुनः सेवा में बहाली का अधिकारी है और चूँकि प्रार्थी कहीं भी रोजगार में नहीं था इसलिये उसे 27-10-93 से पुनः सेवा में बहाली तक पूरा बकाया वेतन 15 प्रतिशत वार्षिक की दर से ब्याज सहित दिलाया जाता है। इसके अतिरिक्त प्रार्थी विपक्षी-नियोजक से दो हजार रुपये वाद व्यय के रूप में भी प्राप्त करने का अधिकारी होगा।

निर्णय आज दिनांक 9-6-1999 को खुले म्यायाशय में लिखाया जाकर सुनाया गया।

श्रीधर पुरोहित, पीठासीन अधिकारी

नई दिल्ली, 28 जून, 1999

का.मा. 2082:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-43012/9/92-आई.आर. (विधि)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th June, 1999

S.O. 2082.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Ltd., and their workman, which was received by the Central Government on the 28-6-1999.

[No. L-43012/9/92-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR

COURT, BANGALORE

Dated : 11-6-1999

PRESENT :

Justice R. Ramakrishna, Presiding Officer.

C.R. No. 67/92

I PARTY

Sri Venugopal,
S/o Sri Sathyanathan,
No. 95, 'F' Block,
Champion Reefs Post,
K.G.F.

II PARTY

The Managing Director,
Bharat Gold Mines Ltd.,
Oorgaum-563120,
K.G.F.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43012/9/92-IR(Misc.), dated 5-8-1992 on the following schedule :

SCHEDULE

“Whether the action taken by the management of Bharat Gold Mines Ltd., KGF, in discharging Sri Venugopal, Furnace Mechanic Grade-I, Central Workshop (Mechanical) from service on the ground that he was declared medically unfit is justified? If not, to what relief the employee is entitled?”

2. The first party was appointed as a General Labourer by the second party w.e.f. 25-3-1970. During 1988 he was working as a Furnace Mechanic Grade-I. During the first week of January 1988 he was admitted to the hospital maintained by the second party. He has been treated from 6-1-1988 to 10-5-88 continuously. It was certified that he was suffering from Lung Tuberculosis of Grade-IV which causes breathlessness with the result a person cannot undertake any hard work and also he will not be in a position to stand and work like any other human being. His case was referred to Medical Board.

3. The Medical Board which was constituted by three doctors out of which one will be Chairman. The Medical Board after examining all the case papers connected to the workman gave their opinion that the first party is unfit to work. The management accepted the said opinion of the Medical Board and removed the workman from services after giving the necessary compensation and other benefits allowed under law.

4. The first party in his claim statement has not denied that he was ailing during the period mentioned

above. His contention is that during 1989 he was completely cured and a certificate by Chief Medical Officer of BGML Hospital was given. When he went with that certificate he was not allowed to resume his work by the management.

5. The second party in their counter statement was contended that since this workman was suffering from a disease stated above he was subjected for medical board to give their opinion to allow him to resume his work. Since the medical board gave the opinion against the workman, the II party compelled to remove him from services after observing other formalities such as paying compensation and other statutory dues.

6. Since this reference is made by the Central Government a finding has to be given on the schedule. No additional issues are framed as there was no scope for the same. The workman was examined as WW-1 to justify the stand taken by him. He has stated in his evidence that he was admitted in the hospital and took treatment as an inpatient for 3 months, then for about 6 months he was taking treatment as out-patient. He has further stated that he is recovered from illness when he went to the CMO for medical check up. After examining the CMO gave a fitness certificate as per Ex. W-1. Thereafter he approached the personal department but they have not provided any work.

7. In the cross examination he has denied of his appearing before the medical board and the consequent issue of a certificate on his health condition.

8. The second party examined one of the doctor as MW-1. It is true that this doctor was not a member of the board but he has claimed of having treated the first party on some occasions when he was suffering from Lung tuberculosis which was miliary in nature. He has explained that Miliary means defusing of whole lung. He has also further stated of examining this workman by a medical board and forming their opinion as per Ex-M-1 and M-2.

9. It is consequentially proved that his workman was suffering from tuberculosis and the gravity of that illness was proved by MW-1. The Medical Board was consisted of Casualty Medical Officer, Deputy Examining Medical Officer and other two Doctors. After examining the first party they gave their opinion as per Ex. M-1 Ex. M-2 is the invaliding form given by the CMO giving the details of ailment and the nature of the disease.

10. The first party is solely relying on a xerox copy said to have been issued by CMO to the Deputy General Manager, personal certifying that the first party is medically fit for work. This is dated 31-3-1989. When the second party has taken a contention that such document was not issued by CMO and admittedly the workman was removed from service immediately after unfit certificate the execution of such a document cannot be accepted at all.

11. What we have to observe in a case of this nature is that some procedure has to be adopted when examining this type of cases. Ex. W-1 is a certificate issued by the Medical Board, who are responsible doctors of the hospital. Their opinion cannot be

questioned unless some motive is attributed to their finding.

In view of these facts and circumstances the action of the management in discharging the first party on the ground that he was declared medically unfit does not call for any interference.

In the result the following order is made :

ORDER

The reference is rejected.

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 28 जून, 1989

का.आ. 2083:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत गोल्ड माईन्स लि. के प्रबंधन के संबंध नियोक्तों और उनके कर्मचारों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलूर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-43011/1/89-आई.आर. (विवाद)]
बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th June, 1999

S.O. 2083.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Ltd., and their workman, which was received by the Central Government on the 28-6-99.

[No. L-43011/1/89-IR(Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, BANGALORE

Dated : 17-6-1999

PRESENT :

JUSTICE R. RAMAKRISHNA, Presiding Officer.

C. R. No. 36/89

I PARTY

S.Sri. Marce and Rajee,
C/o. Senior Joint Secretary,
BGML Labour Association,
Oorgaum P.O.
K.G.F. : 563 120.

II PARTY

The Managing Director,
Bharat Gold Mines Ltd.,
Oorgaum P.O.,
K.G.F. : 563 120.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of sub-section and sub-section 2A of the section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43011/1/89-IR (Misc)—dated 15th May, 1989 on the following schedule :

SCHEDULE

"Whether the action of the management of BGML, KGF in dismissing Sri Maree, Driller-cum-Blaster and Sri. Rajee, Timber Maistry, from service with effect from 9-3-1987 is justified. If not, what relief are the said workmen entitled to ?"

2. The concerned workmen in this dispute are Sri Maree and Sri. Rajee who were working as Driller-cum-Blaster and Timber Maistry respectively during 1987. They have been dismissed from services at the alleged offence of theft, said to have been proved in the domestic enquiry,

3. The allegation of charge against them is disclosed in the charge-sheet was that, on 29-11-1986 at about 8.45 p.m. watch and ward Establishment Hawaldar No. 389 along with four detectives came up from 90th level to witness gold stealing case. when they went there they saw the first party workmen was being caught by Hawaldar Adishivam and his party. It is alleged that they were found engaged in illegal pounding the GBO pieces and the quartz pieces was found in their possession.

4. Both workmen have contested the allegation made by the management and therefore the enquiry was conducted citing 10 witnesses on behalf of management. After the evidence and doing other formalities the enquiry officer gave a finding marked as Ex. M-8 before this court, that both these workmen indulged in theft/dishonesty under standing order No. 15(b)34.

5. The first party raised several contentions as it relates to the validity of domestic enquiry and also the report of the enquiry officer and the action taken by the management are legally unsustainable. The management in their counter statement justified the action taken by them on the proved misconduct of theft coming under SO No. 34.

6. This tribunal has initially decided to give a finding on the validity of domestic enquiry after recording the evidence of enquiry officer and the workmen, this tribunal came to the conclusion that the domestic enquiry has not conducted in accordance with law vide Order dated 31-10-1990. Thereafter several opportunities were given to the second party to prove the allegation of theft by adducing evidence before this tribunal.

7. The second party have not examined any witnesses as directed by this court till 13-1-1992. On that day one of the watchman was examined as MW-2. This witness was cross examined by the first party on 12-8-1996. Thereafter there is absolutely no progress in the case. All the records relating to the

cases arising out of BGML are unfortunately consigned to the records. Since it was a dispute of 1989 the notices were issued to the parties on 23-2-1999 a specific direction was given to the second party to complete their evidence. The case is adjourned not less than 4 rounds but the second party have not examined any witnesses.

8. In view of this tendency further adjournment refused. On 8-6-99 heard the arguments by the learned Advocates and posted for award.

9. Though as many as 10 witnesses were examined in the domestic enquiry, only one witness was examined to prove this allegation. I have gone through the evidence of this witness who is cross examined said to have made after a lapse of nearly 4 years. The evidence of this witness without any corroboration cannot be accepted as a legal evidence in favour of the management.

10. Since this tribunal has held that the domestic enquiry was defective, the conclusion is that there was no enquiry at all. If there is no enquiry the order of dismissal against the above workmen are not a dismissal at all. Since the second party failed to prove the allegation made by them independently before this tribunal the following order is inevitable.

ORDER

This reference is allowed.

The order of the second party in dismissing the services of the above workmen w.e.f. 9-3-1989 is hereby set aside. The second party is directed to reinstate both the workmen to the post they held at the time of dismissal. There shall be continuity of services. However, having regard to this long length of time in deciding this matter the workmen are entitled to 50 per cent of the wages only. If these workmen were paid any interim-relief the amount so paid shall be adjusted to the amount awarded in this order.

If the workmen reached the stage of super-annuation, benefits according to that shall be given including other retirement benefits.

(Dictated to the stenographer, transcribed by her, corrected and signed by me on 17-6-1999).

JUSTICE R. RAMAKRISHNA, Presiding Officer.

नई दिल्ली, 28 जून, 1999

का.प्र. 2084.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत गोल्व माईन्स लि. के प्रबंधन के संबंध में निम्नलिखित और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बंगलौर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था ।

[सं. एन-43011/03/90-आई.आर. (विधि)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 28th June, 1999

S.O. 2084.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bharat Gold Mines Ltd., and their workman, which was received by the Central Government on the 28-6-99.

[No. L-43011/03/90-IR(Misc.)]
B. M. DAVID, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated 18th June, 1999

PRESENT :

JUSTICE R. RAMAKRISHNA, Presiding Officer.

C. R. No. 41/90

I PARTY

The President
Bharath Gold Miners'
Association,
No. 545, Near Punjabi
Line, Oorguam,
K.G.F. 563 120.

II PARTY :

The Managing Director,
Bharat Gold Mines Ltd.,
Oorgaum,
K.G.F. : 563 120.

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section (1) and Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide Order No. L-43011/3/90-IR(Misc) dated 20-6-1990 for adjudication on the following schedule:

SCHEDULE

"Whether the management of BGML, K.G.F is justified in denying payment of overtime allowance to S/Sri Srinivasan, R. Amalanathan, Philomina Raj and S. Daniel, Ambulance Control Room Attendants for the work done by them on Sunday and holidays. If not, to what relief they are entitled ?"

2. The names of the concerned workmen are as shown in the schedule to the points of dispute. They have raised this dispute for the payment of overtime allowance for the work done by them on Sundays and holidays and further direction to the II Party to pay overtime wages from the date of their service as Ambulance Control Room Attenders.

3. The undisputed facts are that each mine was attached with an Ambulance under the supervision of the Overseer for shifting of emergency cases to the hospital. In order to have better control over, each ambulance maintained in each Sanitary Office, the ambulance was centralised and the ambulance control room was located inside the hospital, so that if one ambulance has gone outside for one area another ambulance could be made available for emergency case.

4. This work was earlier entrusted to Sanitary Overseers who were belonging to the Town Administration Department, but, their services were spared to BGML Hospital. The overseers continued to enjoy the service conditions attached to their cadre and therefore they were being paid the wages and other benefits as applicable to the Town Sanitary Overseers for working on Sundays. They were also given a pair of shoes as they were eligible according to their service conditions.

5. During 1977, the ambulance control room was brought under the control of BGML Hospital and all the overseers were sent back to their parent departments. The extra clerks available in the hospital were entrusted the work which was carried out by overseers. Since this clerical cadre had enjoyed the terms and conditions applicable to their cadre and their working hours were fixed at 7 Hrs. and the ambulance control room work was 8 hrs they were given 3 extra shifts payment per month as their working hours was increased by one hour per day. For their Sunday work they were given a compensatory off, but, not the payment of double wages. As these clerks, by virtue of their service and seniority were entitled for promotion the management felt that they should be entrusted clerical work and therefore in the year 1986 they have issued a notification calling for the post of Ambulance Control Room Attenders as per the conditions laid down in the said Notification.

6. The contention of the workmen in their Claim Statement is that they are working in 'F' grade before they were selected to the present work and they are treated as 'F' grade employees. They contended that the nature of work done by them had not been altered in any manner to that of the overseers or clerks and the benefits enjoyed by this category being withdrawn there is a change of service conditions. Their main contention is that whatever is the benefit extended to overseers and clerks shall be extended to them.

7. The management contended that these workmen were selected pursuant to their application and therefore they are bound to accept the service conditions laid down in the Notification. Their further contention is there is no change in service conditions and having accepted the Notification they are bound to work for 9 hours shift for per day and they cannot demand O.T. unless they work beyond 8 hours per day and 48 hours per week. Therefore, they prayed for rejection of the claim made by the workmen as they are unskilled general labourers, consequently financial constraints will not permit to give these benefits to these workmen.

8. On behalf of the workmen, one workman by name Sri Srinivasan gave the evidence. On the management examined Chief Personnel Manager as MW1. The sum and substance of the evidence of MW1 is that the workmen who were working earlier to selection of these workmen were of 'B' and 'C' grade employees and 7 hours work was given to them. They are also paid Sunday bonus shift for Sunday working. They have been provided shoes and coats. Though they were working on general holidays they will be given special double allowance. These workmen have been denied whatever the benefits given to the overseers and clerks.

9. In the cross-examination of the witness, whatever is the contention raised by the II Party in their counter statement has been elicited.

10. The evidence of MW1 disclosed that the Ambulance Maintenance unit was originally maintained by overseers and later by the clerks of the company. As per the service conditions applicable to the overseers, they have been provided shoes and uniform. Later the overseers were sent back and the same work was entrusted to the surplus staff in BGML Hospital. As per the service conditions of the clerks, the working hours was 7 hours per day. Since the work was extended by one hour as they are supposed to work for 8 hours, they used to get 3 shifts extra payment as incentive per month. They are not entitled for double wages and shoes. By virtue of their seniority if they get promotion they have to be sent back to their parent departments. Therefore, the management, taking into consideration the nature of work, issued a notification and out of 100 of applicants these 4 persons were appointed after considering their merits. Therefore, they are not entitled to claim the benefits that was enjoyed by the overseas and clerks.

11. Ex. M1 is the Notification. In this Notification the application are invited from 'F' grade employees of surface departments who studied up to 8th standard to work in 8 hours shift and the nature of work is receiving phone calls, recording in the register and arrange for ambulance for transporting sick/dead etc. Preference was given to physically handicapped.

12. Pursuant to this, all these workmen made their applications. After interview the committee found the above workmen fit for appointment and therefore, they have been issued with appointment Orders which are from M9 to M11, clearly laying down the conditions. The management reserved the right to terminate by giving one month's notice or termination if medically unfit, right to transfer etc. The basic pay was fixed at Rs. 387 per month in the scale of 315-8-491.

13. On going through the conditions of service and the benefits that was made available to the persons working in this department there is absolutely no doubt that the overseers drawn from their parent departments were paid according to their service conditions. Later when the clerks were allowed to take charge of this work they have been paid according to the service conditions applicable to their cadre.

Therefore, overtime wages were given to them for extra one hour work in the manner described above.

14. Similarly, some of the benefits were also given to these workmen and it is also accepted by the II Party if they work beyond 8 hours any additional hours, they are entitled for double wages in accordance with the Standing Orders. They have also contended that if they work on Sundays and holidays suitable remuneration in accordance with Law is also being paid.

15. Since these workmen have accepted the conditions in accordance with the notification and if they wanted any benefits they shall place the necessary materials. It is said that their work confined to receiving telephone calls, entering in the register and arranging ambulance to pick up the ailing persons for hospitalisation and taking them back to their residence. This work does not involve the work that has been entrusted to any underground labourer and also the service condition does not give raise to such benefit.

16. There is absolutely no change of service conditions as contended by these workmen under Section 9A of the Industrial Disputes Act. However, having regard to the facts that they are also coming under the category of workmen for proper identification they shall be provided 2 pairs of uniform and a pair of shoe every year.

17. In view of the facts and circumstances discussed above, there is no denial of payment of overtime allowance and working on Sundays and holidays is suitably regarded. They are not entitled for any other benefit except a pair of shoe and 2 pairs of Uniform every year. The reference is answered accordingly.

(Dictated to the Stenographer, transcribed by her, corrected and signed by me on the 18th day of June, 1999).

JUSTICE R. RAMAKRISHNA, Presiding Officer

नई दिल्ली, 29 जून, 1999

का.आ. 2085.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडिया सीमेंट लि. के प्रबंधन के संदर्भ नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, चैन्नई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-6-99 को प्राप्त हुआ था।

[सं. एन-29015/4/94-आर्.आर. (विविध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 29th June, 1999

S.O. 2085.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Chennai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of India Cement Ltd.,

and their workman, which was received by the Central Government on 29-6-99.

[No. L-29015/4/94-IR(Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL, TAMIL NADU, CHENNAI

Tuesday, the 13th day of April, 1999

Present :

Thiru S. Ashok Kumar, M.Sc., B.L., Industrial Tribunal.

INDUSTRIAL DISPUTE NO. 10 of 1995

(In the matter of the dispute for adjudication under Section 10(1)(d) of the I. D. Act, 1947 between the Workmen and the Management of The India Cements Ltd., Madras-21).

BETWEEN

Shri S. Nallathambi,
Devannagoundanur P.O.,
Sankari 637 301,
Salem Distt.

AND

The Managing Director,
The India Cements Ltd.,
Dhun Buildings,
827, Anna Salai,
Madras-600 002.

REFERENCE :

Order No. L-29015/4/94-IR (Misc), Ministry of Labour, dated 6-2-95, Govt. of India, New Delhi.

This dispute coming on for final hearing on Friday, the 12th day of February, 1999 upon perusing the reference, claim, counter statements and all other material papers on record, upon hearing the arguments of Evi. Row & Reddy, Advocates appearing for the petitioner and of Thiru S. Jayaraman, Advocate appearing for the respondent-management, and this dispute having stood over till this day for consideration, this Tribunal made the following

AWARD

This reference has been made for adjudication of the following issue :

"Whether Shri S. Nallathambi, who was employed as Mines Surveyor by the Management of M/s. The India Cements Ltd., is a workman under the provisions of I.D. Act, 1947? If so, whether the action of the management in terminating the services vide their letter order dt. 20-4-82 is justified? If not, to what relief he is entitled?"

2. The main averments found in the claim statement filed by the petitioner are as follows :

The petitioner was appointed as Mines Surveyor by order dt. 22-3-76 of one Star Construction & Transport Company (Building & Transport Contractors), Sankari, Salem District. The said Company was the contractors of the respondent management, Viz., India Cements Ltd. In 1978, this Company was taken over by the respondent management along with the employees. The services of the petitioner was also taken over by the India Cements the respondent. No fresh appointment order was issued. The Certified Standing Orders framed by Star Construction and Transport Company continued to apply to the employees even after their services were taken over by the respondent management. The petitioner discharged his duties with utmost care and diligence for about 6 years when he was illegally discharged from service by an order dt. 20-4-82 without assigning any reasons. By his letter dt. 23-4-82, the petitioner requested the management to inform him the reasons as to why he was discharged and also to reconsider the decision as he had not committed any misconduct, he had not received any reply. The petitioner raised a dispute on 11-5-82 before the Regional Labour Commissioner, Madras. The respondent management by its reply dt. 7-6-82 raised an objection stating that the petitioner is not a workman and hence the dispute is not maintainable. The petitioner filed rejoinder on 17-6-82. The management filed a further counter on 15-7-82. The Regional Labour Commissioner passed an order on 31-7-82 holding that the petitioner was employed in supervising capacity and therefore not entitled to the benefits of a workman and hence treated the dispute as closed. Challenging the said order of Regional Labour Commissioner as having been passed in excess of jurisdiction, the petitioner filed a W.P. No. 7443/82 before the High Court, Madras. The petitioner prayed for a direction to refer the dispute for adjudication, and the same was dismissed on 1-3-85. A writ appeal No. 662/82 was filed which was also dismissed on 10-7-86 in limine by a one word order 'Dismissed'. Finally, the petitioner filed a SLP No. 556 of 1987 before the Supreme Court. The Supreme Court on 6-10-94 while passing orders in Civil Appeal No. 6624/94 [arising out of SLP (C) No. 566/87] directed the Government to consider the matter for the purpose of making a reference under Sec. 10(1)(d) of the I.D. Act, 1947 for adjudication of the dispute, within 4 months and thus allowed the petitioner's appeal. The dispute now referred as 3 paras viz., (a) whether the petitioner is a workman (b) if so, whether the termination is justified and (c) if not, to what relief he is entitled to. To justify the petitioner as a workman, the post of Mines Surveyor is a statutory requirement for any Mines and the duties and other responsibilities are prescribed by the Regulations framed by the Central Government under the Metalliferous Mines Regulations, 1961. As per Regulation 52, the duties and responsibilities of Surveyor are as follows :

(1) Every Surveyor shall—

(a) Make such surveys and levellings, and sections and tracings thereof as the manager may direct or as may be required by

the Act or by the regulations or orders made thereunder, and shall sign the plans, sections and tracing and date his signature, and

- (b) be responsible for the accuracy of any plan and section, or tracings thereof, that has been prepared and or signed by him.
- 2) The surveyor shall record in a bound-paged book kept for the purpose :—
 - (a) full facts when the workings of the mine have approached to about 75 metres from the mine boundary or from disused or water-logged workings;
 - (b) any doubt which may exist, concerning the accuracy of the plan and sections prepared under these regulations, and
 - (c) any other matter relating to the preparation of the plans, sections, and tracings that may be like to bring to the notice of the manager.

Every entry in the book shall be signed and dated by the surveyor and countersigned and dated by the manager. Provided that where in any time two or more surveyors are employed, each of the surveyors shall make the entries aforesaid in respect of the workings in his jurisdiction of the plans and sections in his charge.

(3) Nothing in Sub-regulation (2) shall absolve the owner, agent or Manager of his responsibility under the Act and under these regulations and orders made thereunder.

"Nature of duties of the Mines Surveyor is highly technical and clerical—These were his dominant, primary and basic duties. The petitioner had no authority to appoint anyone and had no power to sanction leave or take disciplinary action. At the most, he can make a complaint. In addition to the aforesaid primary duties he was occasionally asked to extract work from the contract workers in Civil construction in quarries and road maintenance. He was also asked to prepare a bill/statement of wages payable to these contract workers which is highly clerical in nature. The petitioner had no authority to sanction the amount. Since the petitioner was a resident of the place where the Company is situated, the company used to take his help to identify the land owners while purchasing the lands. Apart from it he was in no way connected with the purchase of lands or determining its price or in signing agreements relating to it. R. 46 of the Mines Rules, 1955 determines only status and position. But this is in no way concerned in determining whether a person is a workman or not. It is a settled position of law that in determining whether a person is a workman or not under Section 2(s) of the I. D. Act, difference in salary and designation by itself is hardly a decisive factor. Focus has to be done on the primary basis or dominant nature of duties. Even if he incidentally does some other work, that cannot change the character or status of the person concerned. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not detract from truth.

The post of Mines Surveyor has been described in Annexure VI of the Cement Board Arbitrators Award set up under Section 10-A of the I.D. Act, 1947. The grade prescribed is VII. The above fact proves that the petitioner is a 'workman' under Section 2(s) of the act. The said award also preserves any higher benefits. It is evident though the petitioner is placed in the managerial grade and derived benefits said to be belonging to that grade, his primary and dominant nature of the duties are as enumerated under Regulation 52 of the Metalliferous Mines Regulations, 1961. Therefore, the petitioner is a workman. The termination of the petitioner is not justified as the petitioner was a permanent employee. He had put in 6 years of continuous and belishless service. The punishment order at 20-4-82 does not give any reasons. There was neither a charge sheet nor an enquiry. In the reply before the Regional Labour Commissioner the management stated that as they lost confidence in the petitioner, he was discharged from service. At no point of time was the petitioner charged of any misconduct. He was also not given hearing before his discharge from service. It is against the principles of natural justice. As the petitioner is a workman, and the management has not complied with the mandatory condition precedent given under Section 25-F of the I.D. Act, the termination is void abinitio. The petitioner prays to hold that he is a workman and therefore his termination is not justified and to pass an award directing reinstatement with continuity of service, backwages and other benefits.

3. The main averments found in the counter filed by the respondent are as follows : The petitioner was appointed as a Mine Surveyor originally in the erstwhile Contract or known as Star construction and Transport Company. He was appointed on a managerial cadre on 23-2-76. As per the Clause 2 of the appointment order, besides his duties and responsibilities as Mines Surveyor, the petitioner was incharge of Civil works, construction and maintenance of building, sheds, roads etc, assisting in purchase of lands and allied matters. He was discharging his duties till the date of discharge, of his service. On a perusal of the various duties which were assigned to him, it would clearly reveal that he falls outside the scope of S. 2(s) of the I.D. Act, 1947 and consequently he cannot invoke the provisions of the said I.D. Act, 1947. On 8-6-78 the respondent took over the Star Construction and Transport Company alongwith other employees pursuant to a settlement reached on 8-6-78. The petitioner continued to discharge his duties and responsibilities like other officers after the take over also. The petitioner was holding the following responsibilities :

- (1) Preparation of estimates for large-scale civil works like laying of Thar roads, construction of buildings, sheds and shelters, involving huge amounts;
- (2) Scrutinising quotations/tenders for the above works and recommending the same for approval;
- (3) Scrutinising quotation/tenders for the disposal of trees in the mines and recommending the same for approval.

(4) Supervising the execution of the above works and

(5) Certification of the Bills.

The appointment of Mine Surveyor is governed by the Mining Legislation. As such the various provisions under the Mines Act and the Mines Rules and Regulations applicable to the Mine Surveyor was applicable to Mr. Nallathanbi, who was a mine surveyor. The status and positions of persons employed are defined in Sec. 37 of the Mines Act, 1952, read with Rule 46 of the Mines Rules, 1955. Mine surveyor is one of the persons coming under this definition and the petitioner was one such person. Therefore, it is clear that the petitioner was a person holding the position of supervision and management as specified in Rule 46(e) of the Mines Rules, 1955. As long as the petitioner continued to work as Mine Surveyor, this definition alone would be applicable to him. Consequently the petitioner cannot take shelter under the provisions of the I. D. Act, 1947 in view of the fact he was not a workman defined in that Act, but also governed by the Mines Legislation. The duties and responsibilities of a Mine Surveyor are governed by Regulation 52 of the Mines and Minerals Rules, 1961. The position and status of the Mines Surveyor are governed by the Mines Rules, 1955. In the respondent management the petitioner had signed the service Regulations applicable to managerial staff and he was also enjoying free petrol for which the wage Board Grade Employees are not entitled. He was enjoying higher travel concession applicable to managerial staff. Above all the petitioner was appointed in the managerial cadre scales of pay and was also getting annual increment at managerial grade scales of pay. He was also enjoying leave facilities which were admissible to managerial staff. For e.g. Sick leave for managerial staff was endorsed only from 1-1-79. Till that time, the petitioner was not entitled for sick leave where as workers were examined the benefit of sick leave ever since 1969. For the encashment of annual leave, the devisor for the managerial staff is 30 while for Wage Board employees it is 26, and the petitioner had been encashing his annual leave. There was a 5% salary cut for managerial staff from 1-10-81 to 28-2-82 which was extended to the petitioner also. There was an enhancement of DA and HRA for the managerial staff from 1-4-82 and the petitioner has also enjoyed the benefit. The attendance register for the managerial staff was maintained separately and they were paid salary on the last day of the month and the petitioner was also paid in the same manner. The petitioner was given designation of Mines Surveyor in compliance with the provisions of Mining legislation which was in force before the arbitration award, which came into force subsequently. Therefore, a mere perusal of the above terms and conditions and also the duties discharged by the petitioner and responsibilities assigned to him would clearly show that the petitioner was not a workman as defined in the I.D. Act, 1947 and was holding a managerial post and consequently dispute raised by him is not a valid one. On 20-4-82, under Clause 14(G) of the Service Regulations applicable to the petitioner, he was terminated from service by giving salary equivalent to 90 days of

notice. Against the termination order, the petitioner raised a dispute u/s. 2A of the I.D. Act, 1947 on 11-5-82 for which the respondent submitted his remarks on 7-6-82, on 17-6-82 the petitioner replied to the remarks submitted by the management and stated that his duties were not supervisory and managerial as contended by the management and that he was a workman under the I.D. Act, 1947. After the conciliation was over, on 31-7-82, the Regional Labour Commissioner closed the dispute saying that the petitioner is not a workman under the I.D. Act, 1947. Aggrieved by the said order, the petitioner preferred Writ petition 7443/82 to quash the conciliation failure report and the Honble High Court dismissed the same. The Writ Appeal 652/86 against the said order filed by the petitioner was also dismissed. The petitioner preferred a Special Leave Petition No. 566/87 to the Honble Supreme Court and the Honble Supreme Court by its order of 6-10-94 allowed SLR and directed the Government to consider the matter for purpose of making reference u/s. 10(1)(d) of the ID Act, 1947. Since the petitioner is governed by Service Regulations which he has signed while getting appointed in the company he is bound by the said regulations. The said Regulations govern the terms and conditions of employment of the parties. The respondent has got ample powers and right to terminate the services of an employee of the petitioner's status in accordance with Regulations 14, sub-clause (1) of the Service Regulations. A mere reading of Mines and Mineral Rules, would clearly show that the duties of the Mine Surveyor are not the duties of a workman but largely duties of a Supervisor but it is also managerial in nature. The duties and responsibilities which were assigned to the petitioner and discharged by him would administer that he can never be construed as a workman and consequently the contention that he did not sanction any leave or appointed anybody will not be of any assistance to the petitioner. The allegation that the petitioner had no power to appoint or sanction leave or take disciplinary action is not fully correct and therefore the respondent denies the same. The petitioner himself has admitted in para 7 of the claim statement that he was not only supervising the work of the contract workers but also extracted work from them which would clearly show that he is not a workman as defined in the I.D. Act, 1947. Preparation of bills/statements of wages payable to contract workers will show that he was holding responsibilities and discharging duties in a managerial capacity. The petitioner was out and out performing the managerial and supervisory work and it was an incidental one, and therefore he cannot be a workman as defined u/s. 2(s) of the I.D. Act, 1947. The petitioner's contention that Rule 46 of the Mines Rules, 1955 determines only the status and post and that it is no way concerned in determining whether a person is workman or not, is untenable. Grade 7 prescribed under Arbitration award, the petitioner was fixed only in supervisory and managerial cadre and he has admitted that he was deriving all benefits belonging to the said cadre. The allegation that the petitioner's duties were primary and demanding nature show that he is a workman since it was in accordance with Regulation 8 of Metalliferous Mines Regulation 8, therefore, he is a workman, is again without substance. The petitioner's allegation that his services were terminated

without a charge sheet or enquiry and therefore his termination is not justified is unable. The management had to take a decision in view of the fact that they had lost confidence in the petitioner since he was acting against the interests of the company. The regulations enable the management to terminate the services of a permanent employee by invoking this rule. The petitioner's contention that the management have not complied with the requirement u/s 25(F) of the I.D. Act, is totally unsustainable. The petitioner is not a workman at all and consequently the retrenchment of workman does not arise. The petitioner is not entitled to any relief as claimed by him. The respondent prays to dismiss the claim.

4. On behalf of the petitioner the petitioner has examined himself as WW1 and Ex. W1 to Ex. W-11 were marked. On behalf of the respondent management. The Paramasivam, Assistant Manager of the Time Office of the respondent was examined as MW1 and Ex. M1 to M.44 have been marked.

5. The point for consideration is "(1) Whether the petitioner is a workman under the provisions of I.D. Act, 1947, (2) If so, whether the action of the management to terminating the services vide their letter dated 20-4-82 is justified, (3) If not, to what relief he is entitled to?"

6. Point No. 1 : Whether the petitioner is a "Workman" under the provisions of the I.D. Act 1947?

The petitioner was appointed as a Junior Engineer (Civil) in Star Constructions and Transport Company at Sankari by Ex. M1 order dt. 1-12-67. His service as Civil Engineer was confirmed by Ex. M.2 order dt. 1-4-68. Later he resigned from Star Construction and Transport Company in January 1970 and joined Salem Magnesite Corporation as a Mines Surveyor. He resigned his job at Salem Magnesite Corporation and again joined in Star Construction and Transport Company on 22-3-76 as per Ex. M.4 joining report and also in pursuance of Ex. M.3 appointment order. The services of the petitioner as Mines Surveyor was confirmed by Ex. M.5 order, dt. 4-6-77 by Star Transport Company. Star Construction Transport Company was taken over by the respondent management and there was a settlement u/s. 18(1) of the I.D. Act, 1947 between respondent management and workmen of the India Cement Employees Union, Sankagiri and India Cements Mines Workers Union, Sankagiri whereby all the employees of Star Construction and Transport Company were taken over by the respondent management on the same terms and conditions of employment as in India Cements Ltd., and the said settlement is Ex. M6. The Petitioner thus came into the service of the respondent and continued to serve as a Mines Surveyor. On 20-4-82, the respondent terminated the services of the petitioner by Ex. W-2 order and paid a sum of Rs. 5,163.75 being 3 months salary in lieu of notice. On 23-4-82 the petitioner sent Ex. W-3 letter requesting to enlighten him the reasons on which he was discharged. Since there was no reply from the respondent, the petitioner raised a dispute u/s. 2A of the I.D. Act, before the Assistant Labour Commissioner, Madras by sending Ex. W-4 letter. The comments Ex. W-5 dt. 7-6-82 were submitted by the respondent before the Assistant Commissioner of Labour contending that the petitioner was not a

workman and he was a managerial staff and that by invoking Clause 14 of the service Regulations applicable to the managerial staff, the petitioner was terminated from service by giving a sum equivalent to 90 days of substantial pay. The reply submitted by the petitioner union to the comments of the respondent is Ex. W-6. The respondent submitted another counter Ex. W-7 wherein they reiterated the same point that the petitioner is not a workman as defined under the I.D. Act, 1947 and substantiated the contention that there are several points which would show that the petitioner was doing managerial and supervisory duties. The Assistant Commissioner of Labour in Ex. W-8 order dt. 31-7-82, closed the dispute holding that the petitioner was holding a supervisory post and not entitled to the benefits of a workman. Against the said order of the Assistant Commissioner of Labour Madras, the petitioner filed W.P. 7443/82 before the Hon'ble High Court and by its order dt. 1-3-85, a single Judge of the Hon'ble High Court was pleased to hold that the nature of the duties performed by the petitioner was on a managerial/supervisory cadre and therefore the petitioner is not a workman and thus dismissed the Writ petition. The order of the Hon'ble High Court is Ex. W-9. Aggrieved by the said order of the single Judge, the petitioner preferred W.A. 662/86 and the Division Bench of the High Court by its order dt. 10-7-86, dismissed the Writ appeal. The petitioner preferred SLP No. 566/87 before the Hon'ble Apex Court of India and Hon'ble Supreme Court held that the dispute regarding the status of the Appellant is a workman within the meaning of the I.D. Act, 1947 is itself a matter for adjudication as an industrial dispute on a reference being made under sec. 10(1)(d) of the I.D. Act, 1947, directed the Government to refer the matter. The order of the Hon'ble Supreme Court is Ex. W-11. In pursuance of the order of Hon'ble Supreme Court, this reference has been made to this Tribunal.

7. The contention of the petitioner is that as Mines Surveyor he is only a workman and he was never entrusted with managerial and supervisory duties. The contention of the respondent management is that the duties of the petitioner as Mines Surveyor was in managerial and supervisory capacity and he was also entrusted with such similar responsibilities and the petitioner had all along been enjoying the benefits applicable to the managerial/supervisory cadre staff. In most part of the cross-examination of the petitioner, the petitioner has virtually admitted that he was doing managerial/supervisory capacity duties and also enjoyed the benefits applicable to such cadre staff. Ex. M.8 is regulations applicable to employees in the managerial grade of the respondent's office i.e. officers in Class (a) to (c) (Gr. I, II & III) of the respondent management. The petitioner has signed in Sl. No. 6 in the capacity as Mines Surveyor in token of his accepting the service regulations applicable to the managerial grade employees. For the staff employed in the managerial grade there is a separate leave travel allowance & the rules for such leave travel allowance is also. The petitioner has availed this leave travel allowance for his travel to Delhi as seen from Ex. M. 10. After accepting the leave travel allowance, he has applied for earned leave on 16-4-81 and the said

application of the petitioner Ex. M.11. The petitioner was paid 75% of Leave travel allowance and earned leave encashment totalling Rs. 3,442.50 as seen from Ex. M.12. Certificate issued by the petitioner on 6-6-81 for his acceptance of availing leave travel allowance is Ex. M.13. On 8-6-81 the petitioner has also given application for payment of balance of 25% leave travel allowance as seen from Ex. M.14. For workman the leave travel allowances is paid along with the salary as per the wage board award and circular for such payment is Ex. M. 15. Thus it could be seen that the petitioner enjoyed the leave travel allowance applicable to the management staff.

On 15-4-82, the DA and HRA was raised for the managerial staff as per circular Ex. M.21 and the petitioner has signed in the said circular. The DA applicable for the other employees like Semi-skilled, Unskilled, Highly skilled workmen for clerical, lower technical staff is Ex. M.22. The percentage of DA applicable to the workmen is different from the percentage of DA applicable to the management staff. The petitioner has been paid dearness allowance applicable to the management staff. As per Ex. M.23, circulars guidelines for the supply of free petrol, the respondent has been giving 25 litres. of petrol every month for those officers who own two wheelers and 50 litres. of petrol for those officers who own four wheelers, to enable them to attend official duties either in the factory or in the Mines. The petitioner during his cross-examination has admitted that at the relevant time, he was owning a motor cycle and he received 25 litres. of petrol freely as per Ex. 23 circular guidelines applicable to the officers. The respondent management gave sick leave facilities and according to Ex. M-24, the workmen were permitted to encash the sick leave but the managerial grade employees were not permitted to encash the unavailed sick leave but were allowed only to accumulate upto 45 days, and the said circular is Ex. M-25 in which the petitioner has signed. Ex. M-26 is the circular granting annual increments for the managerial grade employees w.e.f. 1-1-80 and the petitioner has also signed in the said Ex. M-26 circular. The list of managerial staff for increment for the year 1980 is Ex. M-27 in which the petitioner has signed. All the above concessions like leave travel allowance, increase in dearness allowance, HRA, free petrol and accumulation of sick leave, which are applicable to the managerial staff only have been enjoyed by the petitioner.

The attendance register for managerial staff from March 1981 to April 1982 is Ex. M-16 and the petitioner has signed in Sl. No. 7 in the attendance register maintained for managerial staff. The wages register for the managerial staff is maintained separately and the petitioner has signed in Sl. No. 7 as managerial staff in the said register Ex. M-17. During 1979 the workmen of the respondent management struck work due to bonus dispute and the letter of the respondent management to Deputy Commissioner of Labour is Ex. M-40. During the said strike, period according to the petitioner, all the managerial staff including himself did not participate in the strike and they worked. Ex. M-41 is the attendance register for 1979 in which the petitioner has signed during the strike period. The above attendance registers

would show that the petitioner aligned himself along with the managerial staff in signing the attendance registers separately and also in attending to work when the workmen struck work due to bonus dispute.

The petitioner has prepared estimate for works concerning water and sand in the mines and the said estimate is Ex. M-31. The petitioner also prepared estimate and plan Ex. M-32 for Civil works in the mine and indent prepared by the petitioner for such civil works is M-33. In Ex. M-31 to M-33 according to the petitioner, he has signed in the capacity as head of the department. The advice given by the petitioner for maintenance of roads on Sundays is Ex. M-34. The petitioner's advice for accepting 3 quotations for the supply of gravel for the maintenance of roads is Ex. M-35. The advice of the petitioner for a quotation for supply of water to the workmen is Ex. M-36. The advice of the petitioner for cutting palmera trees at Karumapurathan Mines and fixing the rates for the said trees is Ex. M-37. In Ex. M-38 the petitioner has recommended for giving approval for the rates for constructions like Water tank, Shelter etc. The petitioner has accepted the bills of various civil contractors is Ex. M-39 series. Ex. M-31 to 39 would show that the petitioner was in the capacity of giving advice to accept contract, rates etc. and thus it would clearly show that he has worked in managerial cadre.

All the above documents would show that the petitioner himself enjoyed the benefits and facilities available to the managerial staff, behaved himself as a managerial staff by separately signing in registers maintained for the same and also worked effectively in the supervisory and the managerial cadre by giving advice in civil contracts etc. The voluminous documents produced by the respondent management would show that the petitioner was a staff of the managerial or supervisory cadre.

Even in Writ petition 7443/82, the Hon'ble High Court has discussed in detail the managerial functions performed by the petitioner and has held that the nature of duties performed by the petitioner are that of managerial cadre and therefore he is not a workman. As against the said judgement of the Hon'ble single Judge of the Hon'ble Madras High Court, the petitioner has again filed W.A. No. 622/86 and the same was dismissed. Even in the SLP filed by the petitioner before the Hon'ble Supreme Court in SLP No. 566/87 has only directed this Tribunal to find out whether the petitioner is a workman as contemplated under the I.D. Act, 1947.

Regulation 52 of the Metalliferous Mines Regulations, 1961 deals with the duties and responsibilities of Surveyors such as surveying, levelling and preparing certain plans and sections and tracing thereof as the manager may direct or as may be required by the Act or by the regulations or orders made thereunder and shall sign the plans sections and tracings and date of his signature; and be responsible for the accuracy of any plans and section or tracings thereof, that has been prepared and or signed by him; The Surveyor shall record in a bound book kept for purpose :—

- (a) the full facts when the workings of the mine have approached for about 75 meters from the mine boundary or from disused or water logged workings etc.

Rule 46 of the Mines Rule, 1955 and amended in 1986 and 1989 in Chapter VII while discussing employment of persons under the Rule 46 it is mentioned that Surveyor and Assistant Surveyor are persons holding positions of supervision or management, for the purpose of Sec. 37 of the Mines Act. Sec. 37 deals with supervising staff for whom Sec. 28, 30, 31, 34 and Sub. Sec. 5 of 36 is not applicable. Sec. 28 of the Mines Act is regarding weekly day of rest and Sec. 30 deals with hours of work above ground. S. 31 deals with hours of work below ground, S. 34 and 36 deals with cases of workmen working in the mines. Sec. 37 of the Mines Act is for supervising staff for whom the weekly day of rest, hours of work below ground, above ground etc., which are available for the workmen are not available to supervising staff. Rule 46 of the Mines Rules defines a Surveyor or Assistant Surveyor as persons holding positions of supervision or management for the purpose of Sec. 37 of the Mines Act also. Therefore, apart from legal classification of a Surveyor as a supervisory or management staff, in the oral evidence, the petitioner has admitted the following facts :

1. His designation as a managerial cadre staff and enjoyment of all the benefits available to the managerial grade staff.
2. Has admitted about the nature of duties which are supervisory in cadre and has not let in any evidence that he is doing any manual work.
3. He has admitted that he has got administrative control on the workmen, had power to sanction leave for the workmen and had power to pass bills and prepare estimates for civil works in the mines. All the above facts have been admitted by the petitioner and have also been supported by voluminous documentary evidence produced by the respondent management. Therefore, the respondent management has proved beyond doubt that the petitioner is not a workman but belongs to the managerial cadre. The petitioner has been terminated as per Clause 14(i) of the Service Regulations applicable to the petitioner by paying 3 months salary in lieu of 90 days notice. Since the petitioner is not a workman, as defined u/s 2(s) of the I.D. Act, 1947 since he comes under the exceptions i.e. "who is employed mainly in a managerial or administrative capacity", the question of retrenchment or payment of compensation does not arise. Only when the petitioner is considered as a workman as defined under the I.D. Act, 1947 then the question of his termination and relief available to the petitioner are to be considered. Since point (1) whether the petitioner is a workman as defined under Sec. 2(s) of the ID Act is answered against the petitioner, point No. (2) and (3), justification of his termination and relief entitled to by him does not arise. Therefore, petition is dismissed.

In the result, award passed dismissing the claim of the petitioner. No costs.

Dated, this the 13th day of April 1999.

S. ASHOK KUMAR, Industrial Tribunal

Witnesses Examined

For Worker side :

WW1—Thiru S. Nallathambi

For Management side :

MW1—Thiru P. Paramasivam

Documents marked

For Worker side :

Ex. W1 22-3-76—Appointment Order (Copy)

Ex. W2 20-4-82—Termination Order (Copy)

Ex. W3 23-4-82—Petitioner's representation (Copy)

Ex. W4 11-5-82—2.A. Dispute (Copy)

Ex. W5 7-6-82—Management's reply (Copy)

Ex. W6 17-6-82—Petitioner's rejoinder (Copy)

Ex. W7 15-7-82—Management's Counter (Copy)

Ex. W8 31-7-82—Regional Labour Commissioner's Order (Copy)

Ex. W9 1-3-85—Order in W.P. 7443/1982 (Copy)

Ex. W10 10-7-86—Order in W.A. 662/82 (Copy)

Ex. W11 6-10-94—Order in Civil Appeal No. 6624/94 (S. L. F. No. 566/87) directing the Government to consider and refer the dispute (Copy).

For Management side :

Ex. M1 1-12-67—Appointment Order as J. E. (Civil)

Ex. M2 1-4-68—Confirmation letter.

Ex. M3 22-3-76—Letter from G. M. to Mr. S. Nallathambi reg. appointment as Mines Supervisor.

Ex. M4 14-4-76—Joining report by Mr. Nallathambi.

Ex. M5 4-6-77—The order reg. confirmation of Pay fixation.

Ex. M6—Settlement u/s 18(1) of the I.D. Act.

Ex. M7 8-6-79—Office order-revision of Grade and Salary.

Ex. M8—Staff regulation copy of India Cements Ltd.

Ex. M9 12-3-81—Circular to the Managerial staff reg. L.T.A.

Ex. M10—Declaration given by Nallathambi reg. L.T.A.

Ex. M11 16-4-81—Leave application of Nallathambi.

- Ex. M12—Cash Payment order to Nallathambi.
- Ex. M13—I.T.C. Expenses Statement by Nallathambi.
- Ex. M14—Payment order to Nallathambi.
- Ex. M15 23-9-80—Payment of L.T.A.
- Ex. M16—Attendance Register (Original).
- Ex. M17—Register of Payment of wages.
- Ex. M18—Leave application.
- Ex. M19 20-10-81—Office order to cut of 5 per cent total emoluments.
- Ex. M20 15-3-82—Office order to cut of 5 per cent Salary.
- Ex. M21 13-4-82—Office Order reg. revised HRA & DA.
- Ex. M22 3-7-81—Consumer Order (All India Basis).
- Ex. M23 3-7-81—Guidelines for the supply of free Petrol to the officers
- Ex. M24 26-3-80—Notice reg. encashment of sick leave.
- Ex. M25—Extract of Confidential letter EST. A203-80.
- Ex. M26 21-12-79—Circular reg. Annual increment.
- Ex. M27 1980—Annual increment list for the year.
- Ex. M28 5-9-79—Circular reg. Annual increment.
- Ex. M29 12-2-79—Remittance a sum of Rs. 1164.
- Ex. M30 11-8-81—Worksheet showing the materials required.
- Ex. M31—Design of Estimate of Slow sand water heater.
- Ex. M32—Estimate of Extension of office.
- Ex. M33 12-10-76—Civil Works Indent.
- Ex. M34—Road maintenance of Sundays etc.
- Ex. M35—Letter regarding road safety.
- Ex. M36—Letter given by N. Ramasamy to the respondent sent to pay Rs. 300 p.m. on 10th Jan. 81.
- Ex. M37—Letter from Nallathambi to the respondent reg. purchase of Palm trees
- Ex. M38 8-5-78—Issue carryout letter by S. Nallathambi.
- Ex. M39 3-3-80—Paid charges to the labour supplied for tar road etc.

- Ex. M40 12-10-79—Letter regarding Bonus, Strike.
- Ex. M41 Oct. 79—Attendance Register for the month of Oct. 1979.
- Ex. M42 March 31, 1978—Notice issued by India Cements Ltd. reg. cancellation of Contract 31-3-78.
- Ex. M43—Mines Plan.
- Ex. M44 Oct. 21, 1978—The Gazette of India.

नई दिल्ली, 30 जून, 1999

का.आ. 2086—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मीनियर सुपरिन्टेण्डेंट, रेलवे मेल सर्विस, जयपुर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण, जयपुर के पंचात को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-6-99 को प्राप्त हुआ था।

[सं. एन-40012/121/89-डी. II (बी)]

जी. एम. डेविड, ई.ए. अधिकारी

New Delhi, the 30th June, 1999

S.O. 2086.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (17 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure in the industrial dispute between the employers in relation to the management of Sr. Supdt. of Railway Mail Service, Jaipur and their workman, which was received by the Central Government on 30-6-99.

[No. L-40012/121/89-D.II(B)]

B. M. DAVID, Desk Officer

ANNEXURE

CENTRAL INDUSTRIAL TRIBUNAL, JAIPUR

Case No. CIT 33/90

REFERENCE:

Government of India, Ministry of Labour, New Delhi
Order No. L-40012/121/89-D-2(B) dated 2-5-90.

Shri Jaswant Singh S/o Shri Raghunath Singh through
Railway Welfare Centre, Jaipur. ... Petitioner.

Vs.

Senior Superintendent of Railway Mail Service,
Jaipur. ... Non-petitioner.

PRESENT:

Presiding Officer: Shri M. C. Taylor, RHJS

For the Petitioner: Shri M. F. Baig.

For the Non-petitioner: Shri B. S. Gujar.

Date of Award: 8th August, 1998

AWARD

This reference has been made by the Central Government under Section 10(1) of the Industrial Dispute Act, 1947 (which would be referred as an Act for short) which is as follows:

Whether the action of the Senior Superintendent of Railway Mail Services is justified in terminating the services of Shri Jaswant Singh, Workman, w.e.f. 18-3-89? If not, what relief the workman is entitled to?

2. The petitioner in his statement of claim has alleged that he was appointed as Waterman on 5-4-88 and after his appointment he discharged his duties honestly and with sincerity. But all of sudden on 17-3-89 his services were terminated although in twelve months he has worked for more than 240 days and his duties had been from 9.30 a.m. to 6.00 p.m. He has further alleged that his services were terminated without any notice, compensation as such provisions of Section 25-F of the Act have been violated by the non-petitioner. The action of the non-petitioner is not only illegal but against the principles of natural justice. He has also alleged that as per Section 25-g of the Act, the principles of first-come-last-go and last-come first-go ought to have been violated and the services of the junior persons ought to have been terminated. He has also alleged that after termination of his services others have been appointed and as such provisions of Section 25-h have also been clouted. Therefore, the order of termination be declared illegal and he be taken on services with back wages along with interest.

3. The petitioner in support of his claim, has submitted his own affidavit on which he has been cross-examined by the non-petitioner and have relied upon certain documents which would be referred as and where required.

4. On the other hand the non-petitioner has contested the claim and in his reply he had admitted the removal of petitioner from services on 17-3-89 but he had denied the allegation of the petitioner that he discharged his duties sincerely and honestly from 9.30 a.m. to 6.00 p.m. The non-petitioner has alleged that services of the petitioner were purely on part-time basis from 2.00 p.m. to 6.00 p.m. and he was appointed as Waterman. His services were not satisfactory, he did not keep cleanness and always loitered showing carelessness in his work, so his services were dispensed with. The non-petitioner has also denied that provisions of Section 25-f, g, h of the Act have been clouted stating that the petitioner was purely as part-time worker and his having worked for 240 days did not have any importance and as such provisions of the Act do not apply to him. It has also been alleged that seniority or juniority in his case does not have any application, therefore his claim deserves to be dismissed. The non-petitioner has examined himself in support of the reply and has relied upon certain documents which would be referred when and where necessary.

5. Both the sides were heard and the evidence available on the file was carefully scrutinised by me.

6. For deciding this reference, following questions are under consideration:

1. Whether the petitioner is a workman within the meaning of Section 2(s) of the Act?
2. Whether the provisions of Section 25-F of the Act have been clouted?
3. Whether the provisions of Section 25-g of the Act have been clouted.
4. Whether the provisions of Section 25-h of the Act have been breached.
5. What relief the petitioner is entitled to?

7. We shall be discussing the above questions in the order given above.

Point No. 1:

The representative of the petitioner has argued that the petitioner was appointed on temporary basis on 5-4-88 and he has worked for 240 days and the Railway Mail Service is an 'Industry' within the meaning of 'Industry' as defined in the Act. In support of his argument he has relied upon JT 1997 (9) (SC) page 234 General Manager (Telephones) Vs. S. Srinivasa Rao and others. On the other hand contesting the argument and plea of the petitioner, the representative of the Non-petitioner has argued that the petitioner was appointed on temporary basis as part-time Waterman and he worked in the office from 2.00 p.m. to 6.00 p.m. He did not keep cleanliness and there were complaints against him. He was expected to keep water clean and to offer

it for drinking but he did not do so which shows negligence in discharging his duties. For working on part-time basis for 4 hours a day, he was paid Rs. 424 monthly. Therefore, his work for 240 days does not have any meaning and being a part-time worker, provisions of the Act do not apply to his case. He had governed by the Rules made by the Government and as per rules of the Government, any temporary person can be dismissed without notice if his work is not found satisfactory. In support of his argument the non-petitioner has relied upon JT 1997 (4) (SC) page 560, Himanshu Kumar Vidyarthi Vs. State of Bihar and others.

9. Having discussed about the arguments advanced by both the sides, before I proceed to decide the question under consideration, I would like to advert to the law laid down in the rulings cited by both the sides.

10. In Himanshu Kumar Vidyarthi's case (supra) the Hon'ble Supreme Court has ruled that daily wagers had no right to the post as they are the temporary employees working on daily wages and their disengagement from service cannot be treated to be retrenchment under the Act.

11. In JT. 1997 (9) (SC) page 234 (supra) which has been relied upon by the petitioner, on reference, has laid down that if any undertaking or Department is engaged in the commercial activity and is not engaged in discharging any sovereign functions of the State, then such department would be an 'Industry' within the meaning of the provisions of the Act applying this test, the Hon'ble Supreme Court has held that Telecommunication Department is an 'Industry' and the decisions by the Divisional Bench of Hon'ble Supreme Court in JT. 1996 (2) SC 457 and JT 1997 (6) SC 57 cannot be treated as laying down the correct law.

12. Having discussed with the law laid down in these rulings, it is still further to be considered by us whether the rulings as cited by both the sides are applicable to this case.

13. The main controversy relating with the question under hand is whether the petitioner is a 'workman' within the meaning of the Act. The main thrust of argument as stated above of the non-petitioner had been that the petitioner was purely on temporary basis and his duties were only for 4 hours and as such in view of the ruling of Hon'ble Supreme Court in JT 1997 (4) SC 560, the petitioner is not a workman.

14. So far as this question whether the Railway Mail Service is an 'industry' or not, is concerned there is no doubt that Railway Mail Service is purely a commercial activity and Railway Mail Service does not discharge any sovereign functions. So in view of the ruling of the Hon'ble Supreme Court in the said case, there is no doubt that Railway Mail Service is an 'industry' within the meaning of the Act having found that Railway Mail Service is an 'industry' it is still to be further seen whether the petitioner was purely part-time worker and daily wage and as such his dis-engagement from service can not amount to retrenchment within the meaning of Section 25 in view of the decision in JT 1997 (4) SC 560.

16. There is no doubt that in Himanshu Kumar Vidyarthi's case the Hon'ble Supreme Court has held that if a person is daily wage and temporary his dis-engagement from service cannot amount to retrenchment within the meaning of the Act. Here in this case, to decide whether the petitioner was a temporary and daily wage or not, the non-petitioner has relied upon the evidence of Shri Om Prakash Jangid, who in his affidavit has stated that the petitioner was a part-time waterman and used to work for four hours in a day. For appreciating the evidence of Shri O. P. Jangid, it would be relevant to refer the order of termination marked as Ex. M-1 served by the non-petitioner on the petitioner which reads as follows:

"श्री जसवंत सिंह पुत्र श्री रघुनाथ सिंह जिन्हें
कि. मण्डल कार्यालय जयपुर में दिनांक 5-4-88
से पानी वाले के पद पर अस्थायी नियुक्त किया गया था,
की सेवाएं तुरन्त प्रभाव से समाप्त की जाती हैं।"

If this termination order is read and analysed then it is revealed that the terminating authority has not mentioned

in his termination order that the petitioner was working as part-time waterman and his services were on daily wages. Rather on the contrary the order clearly mention that the petitioner was appointed on temporary basis. Had there been any truth in the statement of Shri Jangid that the petitioner was a temporary waterman and a daily wages then the terminating authority would not have failed to mention about him being a part-time waterman and a daily rated worker. From this failure to mention so, we can not reach to any other conclusion except the conclusion that the petitioner was not a daily wages rather he was appointed as temporary worker on full-time basis. If it is so, then the facts of this case are distinguishable from the facts of the Himanshu Kumar Vidyarthi's case and as such law laid down therein does not apply to the present case in hand.

16. Having found that Railway Mail Service is an 'industry' and that the petitioner was a temporary worker, we have still to further see whether he was a workman within the meaning of I.D. Act. There is no dispute about the fact that petitioner had worked for 240 days. In view of this fact it can be inferred beyond doubt that he was a workman within the meaning of the Act. Accordingly, the question in hand is replied in affirmative.

Point No. 2 :

17. In the course of discussions relating to question No. 1 we have reached to the conclusion that the petitioner was a workman and was employed in 'industry'. There is also no doubt that before terminating the services of the workman, neither one month's notice was given by the non-petitioner to him indicating the reasons for his retrenchment nor he was paid wages in lieu of such notice nor he was paid any compensation as per Section 25(b) of the Act. If this fact is read with the above conclusion, it is established beyond doubt that by not complying with the provisions of Section 25-F of the Act, the non-petitioner has flouted the provisions of Section 25-F of the Act. Accordingly, question No. 2 is also answered in affirmative.

Question No. 3 :

18. This question is answered in negative because the petitioner has not produced any evidence from which it can be inferred that any person junior to him was not retrenched or made permanent.

Point No. 4 :

19. In view of the answer of question No. 3 being in negative, this question is also answered in negative.

Question No. 5 :

20. In view of the discussion of question No. 1, the petitioner is entitled to be taken back on service and is also entitled, in view of the circumstances and particular facts of the case, 50 per cent wages from the date he was retrenched till the date on which he is taken back in service.

21. In view of the foregoing discussions, following Award is passed :

"the order passed by the non-petitioner terminating the services of the petitioner Shri Jaswant Singh is set aside and the non-petitioner is directed to take him back on service and pay half wages from the date of retrenchment till the date he is taken back on service."

22. The Award is pronounced in the open court today the 6th August, 1998. Let the award be sent to the Central Government for publication as per rules.

M. C. TAYLOR, Judge

नई दिल्ली, 30 जून, 1999

का.मा. 2087:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरदर्शन केंद्र, राजकोट के प्रबंधक के संबंध 2066 GI/99—6

निर्वाहकों और उनके कर्मचारियों के बीच, संबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, अहमदाबाद के पंचान की प्रकाशित करना है जो केन्द्रीय सरकार को 30-6-99 को प्राप्त हुआ था।

[सं. एल-42012/130/86-डी. II (बी)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 30th June, 1999.

S.O. 2087:—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (11 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal. Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Doordarshan Kendra, Rajkot and their workman, which was received by the Central Government on the 30-6-99.

[No. L-42012/130/86-D.II(B)]
B. M. DAVID, Desk Officer

ANNEXURE

BEFORE SHRI B.I. KAZI, B.Sc., LL.B., PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL (CENTRAL)
AHMEDABAD

Ref. (ITC) No. 51/87

ADJUDICATION BETWEEN

The Director,
Doordarshan Kendra,
Kothi Compound, Rajkot. First party.

Vs.

The workmen employed under it.

In the matter of termination of Shri Manharlal Ramani,
Peon, Doordarshan Kendra, Rajkot.

APPEARANCES :

Shri S. K. Saifed, Asstt. Govt. Pleader for the first party.

Shri J. C. Joshi, Advocate, for the Second Party.

This industrial dispute between the above-named parties has been referred for adjudication to this Tribunal by Govt. of India, Ministry of Labour, New Delhi, vide Order No. L-42012-130-86-D.II(B) dated 7-10-1987 under Section 10(1)(d) of the I.D. Act, 1947 as per the schedule mentioned below :

"Whether the action of the management of Doordarshan Kendra, Rajkot, in terminating Shri Manharlal Ramani, Peon from service with effect from 13-01-1986 is legal and justified? If not, to what relief the workman is entitled?"

Thereafter under an appropriate order the reference has been transferred to this Tribunal for proper administration.

2. Notices have been issued to the second party to file the statement of claim. The second party has submitted the statement of claim by Ex. 55. The brief facts are that the concerned workman was working in Door Darshan Kendra, Rajkot as the daily wages on Rs. 13.65ps. He was serving as Peon-cum-helper. There was no misconduct on the part of the concerned workman. However, no opportunity for defence has been given for the first party. No notice, notice pay or retrenchment compensation has been given to the concerned workman. Further junior employees were retained and the concerned workman was relieved by oral order on 14th January, 1986. The first party has employed new hands. Thus the concerned workman requested that the action of the first party in terminating the service of the concerned workman should be held illegal and the concerned workman should be reinstated on his original post, with continuity of service.

3. A notice has been issued to the first party to file the written statement. The first party has submitted the written statement by Ex. 8. The brief facts are that the application is not true and concocted. The concerned workman was not employed on the permanent post. He was a casual labour and his services were not continuous. When there is need

of work the daily wager has been employed by the first party and when there is no requirement they are relieved from the job. Thus the appointment is not permanent and the concerned workman has not been appointed by the employment exchange and was not employed on the regular vacant post. When there is a vacancy in the regular post the names are called for from the employment exchange and after taking the interview regular posts are filled by such candidates. The concerned workman was not eligible for the post, hence he was not called for the interview, and his name was not suggested by the employment exchange. The concerned workman was a daily wager and he has not completed 240 days continuously on the regular post, the recruitments are done as per the recruitment rules. Thus being a daily wager he is not entitled for notice or notice pay and he was relieved as per the rules. However, by oral notice, he was relieved. The Industrial Dispute Act is not applicable to the first party and first party is not an industry. Thus this Honourable Tribunal has no jurisdiction to entertain this reference. Thus it is prayed that the demand of the concerned workman is improper and the concerned workman has no right to get any relief. The reference should be dismissed with cost.

4. By Ex. 9 the first party has submitted an application that the first party is not an industry and the Administrative Tribunal has passed an order regarding that and thus this Tribunal has no jurisdiction. Hence the reference may be dismissed with cost. The brief facts of Ex. 9 are that the Industrial Tribunal has jurisdiction only when there is 'Industry'. The Door Darshan Kendra, Rajkot is not an 'Industry' under Section 2(j) of the I.D. Act, 1947, that the activity of the Door Darshan is not like an industry. It is a department of the Central Government. The activity of Door Darshan and Aakashwani is same; All India Radio Aakashwani are departments of the Door Darshan and the jobs are transferable. The Hon'ble Administrative Tribunal of Shri Srinivasan has decided that the Industrial Disputes Act is not applicable to All India Radio and All India Radio is not an Industry. The work of Door Darshan and All India Radio is same and equal. This I.D. Act is not applicable to Door Darshan Kendra, Rajkot. The Asstt. Labour Commissioner Central by his letter dated 15th January, 1988 has taken note of AIR 1978 SC p. 548 in which the Hon'ble Supreme Court has not considered the Door Darshan as an industry. Thus I.D. Act is not applicable and it is a department of the Central Government. Thus the reference of the second party should be dismissed with cost. With that application the judgement in OA/211/87 dated 16-6-1987 of Hon'ble Central Adm. Tribunal of Shri Srinivasan has been attached and letter dated 15th January, 1988 of the Asstt. Labour Commissioner Adipur, has been attached.

5. The second party has filed reply of that application by Ex. 10. The brief facts are that the application is not maintainable and the matter has been referred back to this Tribunal. Door Darshan is a commercial concern making huge profits and is functioning on business basis. The applicant is a casual labourer (daily wager employee). His services are not covered under C.C.S. rules and they are not civil servants, as the petitioner in the subject matter was not a casual labour and it was not an issue before them in the subject matter. Door Darshan is a part of All India Radio. Its employees are covered under the I.D. Act. It is decided by the Hon'ble Madhya Pradesh High Court, 1987 (54) FLR p. 58. In view of the above facts and the circumstances of the case it is prayed that the application filed by the opponent on 7-3-88 may kindly be rejected in the interest of justice. However, by Ex. 30, the Presiding Officer of the Hon'ble Tribunal has passed an order dated 27th August, 1989 rejecting the application Ex. 9 of the first party.

6. The second party has not filed any documentary evidence. The first party has filed documents by list Ex. 13. Mark 13/1 is the affidavit filed by the Director, Door Darshan Kendra, Rajkot regarding production of documents. Mark 13/2 is the working days of the second party. Mark 13/3 is the list of Group D staff from 1984 March in respect of Door Darshan Kendra Rajkot. The copy of the list has been given to the second party. By Ex. 26 the first party has produced further documents. 36/1 is the circular of Door Darshan Kendra regarding the employment. 36/2 is the copies of paid vouchers and the working days of the concerned workman. Mark 36/3

is the copy of the manual regarding employment of chowkidar-cum-peon of Door Darshan Kendra, Rajkot. Mark 36/4 is the list of the persons employed as Chowkidar-cum-peon. Mark 36/5 is the list of working persons who are employed as Chowkidar-cum-peon and mark 36/6 is the list sent by the Sainik Board. The copy of this list has been given to the second party. However, the second party has objected for the exhibition of documents.

7. The second party has examined its concerned workman by Ex. 21.

8. The second party has closed their evidence by purshis Ex. 24.

9. The first party has examined Shri Mohmed Ismail Ex. 34 and the first party has closed their oral evidence by Ex. 35. The learned representative of the second party Shri Gadhia submitted that the concerned workman was working as peon-cum-helper as a daily wager from 28-3-85 in Door Darshan Kendra, Rajkot. Before that he was working with Aakashwani, Rajkot. Thus Door Darshan Kendra is part and parcel of Aakashwani. His services were terminated on 14th January, 1986 by oral order and new persons were employed on that post. Thus the concerned workman has worked from 28-3-85 to 14-1-1986 in Door Darshan Kendra and previous to that period he was working with Aakashwani for one year as per Ex. 33. The first party has employed new hands and the concerned workman was not called at the time of new employment. Hence the action of the first party is in violation of Section 25G & 25H of the I.D. Act, 1947. In his support he has cited 1996 I GLH p. 84, 1995 I GLH (U) 6 and 1993 I CLR p. 205. Thus the concerned workman is entitled for reinstatement with full back wages.

10. Heard Shri Munshi, learned representative for the first party. It is submitted that the concerned workman has worked for 157 days in preceding 12 calendar months. It is denied that Door Darshan and Aakashwani are same undertaking or establishment. The concerned workman was not employed as per the recruitment rules. If we look the recruitment rules chapter 16 provides that the recruitment of Group C & D employees shall be done by inviting vacancies to the employment exchange and it should be clearly mentioned regarding services for SC & ST Ex-servicemen. Thus looking to this circular the recruitment of Group D employees (category of concerned workman) is filed by calling the employment exchange or from Sainik boards and person who have the qualification should be eligible for the post. Thus the concerned workman was employed as daily wager; there was no continuous service of the concerned workman and he has not completed 240 days and his recruitment was not as per the rules. The concerned workman has no right on the post. So he is not entitled for reinstatement. Looking to mark 36/2, the concerned workman was paid for the days he has worked. Thus it clearly proves that the services of the concerned Workman was not continuous service and he was not appointed on the clear post. He was a daily wager and looking to this he has no right to claim reinstatement with full back wages. Mark 36/3 provides that the recruitment of Chowkidar-cum-peon in Door Darshan Rajkot should be done by Ex-servicemen and by 36/6 the first party has submitted the list sent by Sainik Board dated 28th October, 1985. His name was not sent by Sainik Board and looking to this he was not eligible for the post. So there is no breach of Section 25G or 25H of the I.D. Act, 1947. It is applicable only when the concerned workman, entitled for the post as per the qualification and eligibility. Looking to this fact the concerned workman was not entitled for the post or was not eligible for the post and the recruitment done after the termination of the service of the concerned workman is legal and proper. Hence Section 25G and 25H are not applicable in the case of concerned workman.

11. Looking to these facts and looking to the terms of reference following issues are to be decided for my consideration.

1. Whether the action of the management of Door Darshan Kendra, Rajkot in terminating the service of Shri Manharlal Ramani from 13th January, 1986 is legal and just?

2. Whether the concerned workman is entitled for the benefit of Section 25G and 25H of the I.D. Act, 1947.

3. Whether the concerned workman should be reinstated as a peon.
4. What order about back wages ?
5. What relief should be granted to the concerned workman ?

12. My answer to the above issues are as under as per the reasons given below :

1. Yes. 2. No. 3. No. 4. No order about back wages.
5. As per the final order of the award.

REASONS

13. As per Ex. 21, the oral evidence of the concerned workman he was employed by Door Darshan Kendra, Rajkot from 28-5-1985 as a peon-cum-helper and he was relieved from service from 14th January, 1986. In his evidence it is stated that four new persons Kiritbhai, Samabhai, Mayurbhai & Dado Samratbhai were employer after his termination. He was working as a helper in camera shooting. It is stated that before Door Darshan he was employed at Aakashwani and he had worked there for one year. However, he had admitted in cross-examination that he was not employed through employment exchange and no appointment letter was given to him. It is also admitted that he was a daily wager and when there is a work he was called 'Pop' employed. It is also admitted that there is no written order of his transfer from Aakashwani to Door Darshan and there is no evidence for the service he has rendered in Aakashwani. After his termination new persons were employed as daily wagers. However, there is no documentary evidence produced by the concerned workman. If we look to the evidence of Iqbal Ismailbhai as per Ex. 34, who was serving in Doordarshan Kendra, Rajkot as an Asstt. Engineer, and at the time of evidence he was holding the charge of Adm. Officer, the concerned workman was employed as a daily wager and he has been paid as per the days he had worked in the month; daily wagers are employed when there is work and it is related to studio work; for filling the permanent posts, names are called by employment exchange or by Sainik Board. However his name was not sent for the regular employment. It is also stated by this witness that the concerned workman has not worked 240 days in a calendar year. Preceding the termination. He has admitted in cross-examination that the work which the concerned workman was doing is presently available and the persons are appointed to do that work by the department on the post of a helper-cum-peon as per the rules and regulations of the department. Thus if we look the recruitment rules of the first party, chapter 16 of the rules provide recruitment through employment exchange. It is clear that the concerned workman was not employed through employment exchange or Sainik board, not only that for the post of Chowkidar-cum-peon can be filled only by ex-servicemen, as per rule 3 to (z).

14. The concerned workman has worked for 157 days. Thus from May, 1985 to December, 1985, the total working days of the concerned workman is 157. Thus as per the Section 75(b) of the Industrial Disputes, Act, the concerned workman has not worked for 240 days in a calendar year preceding his termination. Thus Section 25F does not come into play. Hence being a daily wager and also he has not completed 240 days in a calendar year, no notice or notice pay is required for the termination of the concerned workman. The post has to be filled by Ex-servicemen and the names have to be called from Sainik board or through employment exchange. This action of the first party in filling the posts as per the rules and regulations of the first party for the recruitment of the post is legal and proper and is not in violation of Section 25G and 25H of the I.D. Act, 1947. The concerned workman was a daily wager and he has no right on the post when he was employed for the casual work. Thus in Arjunbhai J. Chavhan vs. State of Gujarat 1997 (3) XXXVII page 6. The Hon'ble High Court of Gujarat has held as follows :

"Termination & appointment made on temporary basis without following the relevant recruitment rules—such employee does not acquire any right of continuation in service—fact that appointment was made after calling names from employment exchange

would make no difference. Similarly putting in long service on the post have also not acquire right and held further that such appointments are fraud on constitutional provisions of Article 14 & 16 and Special Civil Application was rejected because the appointment of the petitioner was made contrary to rules and it was an irregular appointment."

In the present case also the employment of the concerned workman was of casual nature and it is not a regular appointment and not as per the rules and the concerned workman has not completed 240 days the concerned workman is not entitled for the reinstatement. The persons who were employed after the termination of the concerned workman were as per the rules and regulations and after following the due procedure, the persons were selected. The second party has not presented any document that the juniors were retained, though employed as a casual labour. Thus without any evidence regarding Section 25G & 25H and there is specific denial by the first party it was the duty of the concerned workman to prove the allegation that juniors to him are retained in service and his services was terminated. If we look Ex. 36/4 three of the persons employed from chowkidar to peon are ex-servicemen and the concerned workman has not proved that he was an ex-serviceman. Thus the first party has not violated the rules in employing chowkidar-cum-peon and the recruitments are made as per the rules. Thus the concerned workman is not entitled for the reinstatement for the post of chowkidar-cum-peon particularly in Government Corporation or Board. back-door entry is not permissible and merely serving as a casual labour for some period does not confer any right to such type of employees to continue in employment on a permanent post.

15. As the termination is not illegal or improper or unjust, the concerned workman is not entitled for the reinstatement. Not only that the concerned workman has not been reinstated. He is not entitled for the back wages. However, if there is need of casual labour, it is desirable that the concerned workman should be preferred to above new hands and he should be given employment when there is casual work.

16. Looking to the above observation, I hereby pass the following orders.

ORDER

The action of the first party in terminating the services of the concerned workman as a casual labour with effect from 13th January, 1986 is legal and justified. Thus the termination being legal, the concerned workman is not entitled for reinstatement and any back wages. Further, it is directed that if there is work of casual nature, the concerned workman should be preferred above the new hands. No order as to cost.

B. I. KAZI, Presiding Officer

नई दिल्ली, 30 जून, 1999

का.आ. 2088.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार गरिया एकाउण्ट आफिसर, गरिया अकाउण्ट आफिस (सी डी एन् ए सी) के प्रशासन के संवर्धन नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अजमेर के पंचाट को प्रकाशित कम्पनी है, जो केन्द्रीय सरकार को 30-6-99 को प्राप्त हुआ था ।

[न. एन-14012/19/96-आई आर (डी यू)]
बी.एस. अखिल, हेमन्त शशिवादी

New Delhi, the 30th June, 1999

S.O. 2088.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Area Account Officer, Area Accounts Office (CDA-SC) and their workman, which was received by the Central Government on the 30th June, 1999.

[No. L-14012/19/96-IR(DU)]
B. M. DAVID, Desk Officer

अनुबन्ध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,
जयपुर ।

केस नं.: सी.आई.टी.बी.-25/97

विज्ञप्ति सं.: एल-14012/19/96 आई.आर. (बी.यू.)
श्री प्रेमचंद बैरवा, द्वारा श्री ऋषभचंद जैन,
80, बगरंग बिहार, गोपालपुरा फाटक के
पाम, टोक रोड, जयपुर

बनाम

एरिया एकाउण्ट्स ऑफिसर (सीडीए-एमसी),
मिलट्री एरिया, खातीपुरा रोड, जयपुर ।
उपस्थित-श्रमिक की ओर से

एरिया एकाउण्ट्स ऑफिसर — श्री बी.पी.
की ओर से . बंसल एवं
श्री बी.के. शर्मा,
एडवोकेट

पंचाट तारीख : 17-6-99

पंचाट

भारत सरकार के द्वारा उक्त विज्ञप्ति जरिए निम्न विवाद
हस अधिकरण को लाय निर्णय हेतु निर्देशित किया गया है—

“Whether the action of Area Accounts Officer, Area Accounts Office (CDA-SC) Khatipura Road, Jaipur justified in terminating the services of the workman, Sh. Prem Chand Bairwa w.e.f. 27-9-95 (AN) after employing him for more than 240 days in a year from 31-10-94 to 27-9-95 If not, what relief the workman is entitled to?”

पक्षकारों को नोटिस जारी किए गए । श्रमिक अथवा उनकी ओर से कोई प्रतिनिधि उपस्थित नहीं हुआ न ही कोई स्टेटमेंट ऑफ क्लेम प्रस्तुत किया गया, जिससे ऐसा प्रकट होता है कि श्रमिक को केम फाईल करने में कोई रुचि नहीं है । इन परिस्थितियों में विवाद रहित पंचाट पारित किया जाता है । पंचाट की एष प्रतिलिपि भारत सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17(1) के अन्वयानुसार प्रकाशनार्थ प्रेषित की जाय ।

ह./—
पीठासीन अधिकारी

नई दिल्ली, 1 जुलाई, 1999

का.घा. 2089:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिन्दुस्तान जिंक लि. के प्रबन्धकों के संबंध नियो-जकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-99 को प्राप्त हुआ था ।

[सं.एल-43012/1/97-आई.आर. (विधि)]

बी.एम. डेविड, डेस्क अधिकारी

New Delhi, the 1st July, 1999

S.O. 2089.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Hindustan Zinc Ltd. and their workman, which was received by the Central Government on the 1-7-1999.

[No. L-43012/1/97-IR(M)]

B. M. DAVID, Desk Officer

अनुबन्ध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,
जयपुर

केस. नं.: सी.आई.टी.बी.-22/97

विज्ञप्ति संख्या: एल-43012/1/97 आई आर. (मिस.)
सीनियर पर्सनल ऑफिसर/सीनियर प्रोजेक्ट मैनेजर,
हिन्दुस्तान जिंक लिमिटेड, डेगना टंगस्टन प्रोजेक्ट,
पोस्ट-डेगना, जिला नागौर (राजस्थान)

बनाम

श्री रूग्गराम चौधरी,
द्वारा—ऋषभचंद जैन, 80 बगरंग बिहार,
टोक रोड, जयपुर ।

उपस्थित—हिन्दुस्तान जिंक लिमिटेड—श्री जी.एम. माधुर,
की ओर से — एडवोकेट
प्राची की ओर से — कोई नहीं ।

पंचाट तारीख - 17-6-99

पंचाट

भारत सरकार के द्वारा उक्त विज्ञप्ति के जरिए निम्न
विवाद तय किए जाने हेतु निर्देशित किया गया है—

“Whether the action of the management of Hindustan Zinc Ltd., Degana Tungstan Project, Dist. Nagaour is justified in superannuating from service Shri Rugga Ram w.e.f. 11-7-95 treating the date of birth as 1-7-37 when his date of birth as per certificate date 12-2-71 of mines Manager, Tungstan Project, Degana is 1-7-46 and as per Employees Provident Fund is 18/3/46? If not, to what relief the workman is entitled to and from what date?”

पक्षकारों को नोटिस जारी किए गए। दिनांक 24-8-97 को श्रमिक की ओर से श्री आर.सी. जैन, एडवोकेट उपस्थित हुए व क्लेम पेश करने के लिए समय चाहा। क्लेम पेश करने हेतु दिनांक 9-12-97 नियत की गई। उस दिन यूनियन की ओर से कोई उपस्थित नहीं हुआ न ही कोई क्लेम प्रस्तुत किया गया। दिनांक 1-6-99 को क्लेम प्रस्तुत करने के लिए पुनः रजिस्टर्ड नोटिस दिया गया। रजिस्टर्ड नोटिस को तामिल श्री रूग्गाराम चौधरी जरिए श्री अश्वभक्त जैन पर निर्देश में उल्लिखित पने पर हो गई। साबित्व तामिल नोटिस के प्रार्थी की ओर से कोई उपस्थित नहीं हुआ न ही कोई क्लेम प्रस्तुत किया गया। क्लेम प्रस्तुत करने हेतु पर्याप्त अवसर दिया जा चुका है। क्लेम पेश न करने के कारण ऐसा प्रकट होता है कि प्रार्थी को क्लेम प्रस्तुत करने में कोई रुषि नहीं है। इन परिस्थितियों में विवाद रहित पंचाट पारित किया जाता है। पंचाट की एक प्रतिलिपि भारत सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17(1) के अन्तर्गत प्रकाणनार्थ प्रेषित की जाए।

ह./-

पीठासीन अधिकारी

नई दिल्ली, 1 जुलाई, 1999

का.आ. 2090:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में केन्द्रीय सरकार कर्मचारी राज्य बीमा निगम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अन्वय में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-99 को प्राप्त हुआ था।

[सं. एल-15012/4/96-आई आर. (विवाद)]
बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 1st July, 1999

S.O. 2090.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Employees State Insurance Corp., and their workman, which was received by the Central Government on the 1-7-1999.

[No. L-15012/4/94-IR(Misc.)]
B. M. DAVID, Desk Officer

ANNEXURE

INDUSTRIAL TRIBUNAL, JAIPUR

Case No. CIT 31/96

Ref: Govt. of India, Ministry of Labour, New Delhi Order No. 15012/4/96 I.R. (Misc.) dated 14-8-86.

Mukesh Kumar Saini S/o Shri Babu Lal Saini Resident of Plot No. 13, Kalidas Marg, Brahmpuri, Jaipur.

..... Applicant.

Vs.

Regional Director, Employees State Insurance Corporation, Panchdeep Bhawan, Bhawani Singh Road, Jaipur.

..... Non-applicant.

Present

Presiding Officer: Sh. M. C. Taylor, RHJS
For the Applicant: Shri R. C. Jain.
For the Non-applicant: Shri P. K. Bhatnagar.
Date of Award: 3rd February, 1999.

AWARD

The Central Government has referred this dispute for adjudication under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter would be referred to as an Act). The terms of the reference are as under:

"Whether the action of the management of Regional Director, Employees State Insurance Corporation, Jaipur is justified in terminating the services of workman Shri Mukesh Kumar Saini S/o Shri Babu Lal Saini, part time Gardner, w.e.f. 30-6-1995 (A/N)? If not, to what relief the workman is entitled?"

2. In support of the reference the petitioner has filed his claim alleging that by order dated 2-12-92 the petitioner (hereinafter would be referred as the worker) was appointed on the post of Mali on 7-12-92 on part time basis, but full time work was taken from him. It has also been alleged that before giving employment to him his name was sent for in the Employment Exchange and he was regularly appointed after due selection. Prior to 1-7-95 after his appointment the worker continued to work and during this period his work was fully satisfactory. On 1-7-95 when the worker opposing the payment of Rs. 400/- only per month demanded the regular pay scales and allowances, the non-petitioner discharged him from services. Before doing so neither any notice as required under Section 25-F of the Act was given to him nor any wages in lieu of such notice was paid to him although before discharge from service he has worked for more than 240 days in the preceding year. He has further pleaded that in the non-petitioner institution still many junior workers are working and after his discharge from service new workers were employed in the non-petitioner institution. The non-petitioner have also not complied with Section 25-F, G and H of the Act and have not complied with Section 77 and 78 of the I.D. Rules (Central). He has also pleaded that after his discharge from the services he raised the dispute before the Conciliation Officer and when the conciliation proceedings failed the present reference was made. On the grounds stated as earlier the reference deserves to be accepted and the order of removal dated 1-7-95 be declared unjustifiable and illegal and the workman be ordered to be taken back in service with all consequential benefits and with any break in service.

3. The non-petitioner has contested the claim of the worker and in its reply it has admitted that the worker was employed on part time basis on 7-12-92 as Mali after having sent for his name from the Employment Exchange and having duly interviewed him. It is also admitted that the services of the worker were terminated w.e.f. 30-6-95 and at the time of termination he was being paid Rs. 400/- per month, but denying the other allegations made in the claim the non-petitioner has alleged that the worker was purely appointed temporarily on part time basis and no full time work was taken from him. His work was not satisfactory and time and again he was advised to improve his work. When he failed to do so his services were terminated. But before terminating his services one months wages in lieu of notice and compensation equivalent to 45 days was given to him by Cheque No. 18720 dated 30-6-95 but the worker mala fide refused to take it. On his refusal the cheque was sent by registered post in the home address of worker but he mala fide got it sent back bearing an endorsement that the receiver is not available even after having gone to him time and again. The non-petitioner also denied that any junior person is working or any junior man was employed as Mali. The non-petitioner further pleaded that in the Corporation no post of Mali is sanctioned therefore, question of employing any junior worker on such post does not arise and as such the allegation of the worker that junior persons have been retained and junior persons are employed is totally false and mis-leading. It has also been further pleaded that the worker was employed for maintaining trees, lawns in the premises

of the Corporation on part time basis. His services were found to be unsatisfactory inspite of repeated warnings, therefore his services were terminated and there is no such provisions which require any enquiry before such termination. The termination of the worker was perfectly according to the rules and provisions of law. No provisions of law have been breached and in these circumstances the worker is not entitled to any relief and consequently his claim deserves to be turn down.

4. In support of the claim the worker has examined himself on oath and has relied upon certain documents which would be referred to as and where necessary. On behalf of the non-petitioner affidavits of S/Shri Sobhraj and Shri Kudal have been filed on which they have been cross-examined by the worker. The non-petitioner has also relied upon Ex. D-1 to D-7.

5. Both the sides were heard and the evidence available on the record was perused by me. Following are the points for determination in this case :

1. Whether the action of the management of Regional Director Employees State Insurance Corporation Jaipur is justified in terminating the services of workman Sh. Mukesh Kumar Saini w.e.f. 30-6-95 ?

2. As to what relief the workman is entitled to ?

6. The above points shall be decided in the order given above.

Point No. 1 :

7. In this regard the learned representative for the worker has argued that in this case it is an admitted fact that the worker was employed after sending for his name for the Employment Exchange and after his due selection. He also further argued that in this case it is also an admitted fact that the worker has worked for more than 240 days and as a result of it, it was a must on the part of the non-petitioner to have comply with the provisions of Section 25-F of the Act. For complying the provisions of section 2-F of the Act, the non-petitioner ought to have paid wages in lieu of one months notice and ought to have paid compensation for the services rendered by him as required under Section 25-F of the Act. But the non-petitioner has failed to prove that the compliance of Section 25-F of the Act was made. He further argued that the non-petitioner has come out with the theory that Ex-D-3 was given to him and a cheque equivalent to one month's wages and compensation for 45 days was given to him but the workman refused to take the same. The learned representative also argued that in support of this theory the non-petitioner has examined one Shri Sobhraj and other Shri B. R. Kudal. Shri Sobhraj in his statement says that the cheque was given by Shri Kudal in his presence but the worker refused to take him. Whereas Shri Kudal in his statement says that when the cheque was offered to the worker nobody was present. That in other words means that Shri Kudal himself does not admit the presence of Shri Sobhraj. Thus there is contradictory evidence about the factum of offering the cheque to the worker. In view of this contradictory evidence no weight can be attached to their evidence and the evidence of the worker that no wages or compensation was offered to him, can not be discarded. The learned representative further argued that Shri Kudal, who alleges to have offered the cheque to the worker, has admitted in the cross-examination that the worker came for doing the work for two hours only and the other witness Shri Sobhraj also admits in his cross-examination that the worker never stayed after 9.30 and he always used to go before 9.30. If the worker never stayed up to 9.30 and used to go earlier to 9.30 then the evidence of the witnesses that cheque was offered to him stands falsified and as such the plea of the non-petitioner that the cheque of Rs. 1000 was offered to him and he refused to take it also stands falsified. The learned representative further argued that so far as sending the cheque by post is concerned, that also does not amount to tendering the cheque to him because it has never returned with the endorsement that the worker refused to take it. It has returned with the endorsement that time and again the postman went to the address given in the letter but the worker was not available. From this endorsement it cannot be inferred that the cheque was offered to him. Thus from

the evidence of the non-petitioner it is not proved that the one month's wages in lieu of notice and the compensation for the services rendered was tendered or offered to him and as such the compliance of Section 25-F is not at all proved. In support of his argument the learned representative has relied upon the following rulings :

1. R.R. 1994 (1) Ex. En., PWD and another Vs. Labour Judge etc, and another page 465.

2. Bhanwar Lal and others Vs. Municipal Board Nagaur and others, RLR 1987 (1) page 601.

Lastly, the learned representative for the worker argued that even for argument's sake it is accepted that a cheque of Rs. 1000 was offered, even then it is not compliance of Section 25-F of the Act because according to Section 25-F the non-petitioners were under a duty to have paid one months wages in lieu of notice which is equivalent to Rs. 400 and should have paid compensation for the services rendered for 45 days. The compensation for 45 days ought to have been calculated on the basis of 26 working days in a month. But here in this case the compensation has been calculated on the basis of 30 days in a month, and it has been calculated to be Rs. 600. If the compensation had been calculated on the basis of 26 working days in a month then the compensation is payable to him would have been more than Rs. 600. If this compensation is added to the one month wages in lieu of notice then the amount would be more than Rs. 1000 and the non-petitioners have simply alleged to have tender only Rs. 1000 and therefore, the payment fall short of the payment required to be paid under section 25-F of the Act and as such compliance of Section 25-F of the Act has not been made. In support of his argument the learned representative has relied upon Trade Wings Ltd. vs. Prabhakar Dattaram Prodkar of Bot and another 1992-II LLN 500. Relying upon the decision in the above ruling the learned representative drew our attention to the fact that in the above decision the Hon'ble Bombay High Court relying upon 1984 II L.L.N. 459, Jeevan Lal Ltd. Vs. Appellate Authority under payment of Gratuity Act and others held that merely because the average pay has been separately defined under Section 2(aaa) of the Act, that does not detract from the view that the retrenchment compensation should be computed on the basis of monthly pay in respect of 26 working days. The learned representative further drew our attention that in the above decision the learned Bombay High Court has also held that retrenchment compensation payable under Section 25-b of the Act is required to be computed on the basis of workman's monthly wages for 26 working days and 15 days average pay has to be worked out on the basis of monthly wages drawn by him for 26 working days. The learned representative also argued that the Hon'ble Bombay High Court has also held that his daily rate of wages should be ascertained on the basis of the wages earned for 26 working days. Thus for a valid determination the 15 days average pay has to be worked out on the basis not by taking the average pay of 30 days. The learned representative lastly argued that if the above decision is applied to the present case then it is clearly established that the non-petitioner has calculated 15 days average pay on the basis of 30 working days not on the basis of 26 working days and as such the payment fall short of the payment required to be made under Section 25-F of the Act. Thus compliance of Section 25-F of the Act is not proved and hence the termination of the workman is unjustified and illegal.

8. On the other hand the learned representative for the non-petitioner argued that in this case it is an admitted fact that the worker was a part time worker and he was not appointed against a post in the department. He did not have any right to the post and as such on the ground of his work having been found unsatisfactory his removal from the service does not amount to termination within the meaning of Section 25-F of the Act. Besides it the management has led the evidence and from the evidence of the management it is clearly proved that one months wages in lieu of notice and 45 days compensation for the services rendered prior to removal was tendered to the worker by way of cheque by the management witness Shri Kudal but the worker refused to take it. On his refusal the cheque was sent by post at his home address but the work-

man avoid taking of the cheque. From this conduct on the part of the worker it can be inferred that the money was tendered to the worker but he voluntarily evaded the receipt of the cheque. Thus the plea of the petitioner that the provisions of Section 25-F of the Act were not complied with, does not hold good. The learned representative has also argued that so far as question of calculation of compensation is concerned, that has been rightly calculated. It is an admitted fact that last pay drawn by him was Rs. 400 per month and the termination was passed on 30-6-85 and thus in the month there were 30 days only and on the basis of 30 working days the compensation for 45 days works out to be Rs. 600. If this is added to one months wages i.e. Rs. 400 then the total amount comes to Rs. 1000 and a cheque of Rs. 1000 was tendered to the workman, thus the payment to him does not fall short of the required payment. The plea of the learned representative for the worker that short payment was made cannot be accepted. The rulings relied upon by him does not render any help to him specially when the ruling of the Hon'ble Supreme Court was regarding gratuity and payment of bonus only. Lastly, the learned representative argued that the learned representative for the worker has pointed out about some contradictions in the statement of witnesses. The contradiction is of minor nature and it do not affect the credibility of the witnesses as such their testimony that the cheque was offered to the worker and worker refused to take it, cannot be doubted. Lastly, in view of the above argument he argued that since the workman was appointed purely on temporary basis for a part time job and not on a post, did not have any right to the post and, therefore, his removal on the ground of his work having been found unsatisfactory does not amount to be unjustifiable and illegal.

9. I paid my earnest attention to the rival arguments advanced by both the sides. Before embarking upon the question whether one months wages and compensation as required under Section 25 of the Act was tendered to the workman or not, we would first take up the question whether the amount which is alleged to have been offered to the workman is a short payment.

10. As stated earlier, the learned representative for the worker relied upon P.D. Phodkar's case (supra). In the above case the Hon'ble Bombay High Court in its decision has held that for the purposes of calculating retrenchment compensation payable under Section 25-F of the Act, the compensation is required to be computed on the basis of workman's monthly wages for 26 working days. If this principle is applied in the present case in hand and if the monthly wages for 26 days is taken to be Rs. 400 which was admittedly his last wages then the compensation for 45 days works out to be Rs. 693. If this amount is added in one month's wages of Rs. 400 then the total amount payable under Section 25-F of the Act was Rs. 1093. Admittedly in this case the amount which alleged to have been offered is only Rs. 1000 and thus amount offered was short by Rs. 93. From the shortage of Rs. 93 in the amount offered it can be inferred without any hesitation that the amount offered by the non-petitioner to the worker was not as required by Section 25-F of the Act and as such the non-petitioner has breached the provisions of section 25-F of the Act and as such on this count the termination of the worker cannot be just and legal.

11. Having come to the finding that the payment offered was a short payment now I have to see whether the cheque was really offered. Shri Kudal has said in his statement that the cheque was offered and the same has been corroborated by the another witness of the management Shri Kalyan Sahai and the worker has not specifically rebutted their statement. On a minor contradiction their testimony cannot be doubted. This in other words means that tendering of Rs. 1000 by way of cheque towards one months wages and compensation is well proved and the plea of the worker that it was not legally offered, cannot be accepted but the plea that payment was short as accepted.

12. As a result of foregoing discussion the point under consideration is ruled in negative.

Point No. 2:

13. Having replied the point No. 1 in negative now we have to see as to what relief the worker is entitled to. In this regard the learned representative for the worker argued that once the non-compliance of Section 25-F of the Act is proved; the worker is entitled to be reinstated with back wages. He cannot be denied of back wages merely because he is not pleaded in his statement of claim that he was not gainfully employed. As per 1994 (1) RLR 464 (Supra) the Hon'ble Rajasthan High Court has held that the burden to prove the fact that the worker was gainfully employed is on the employer. Here in this case the employer has neither pleaded about it nor has led any evidence. So in view of the decision in the above case the worker is entitled to wages for the period during which he remained out of service.

14. On the other hand the learned representative for the non-petitioner argued that the worker was a part time worker and he was not appointed against a post. There is no post of mali and as such he is neither entitled to be reinstated nor is entitled to get any back wages. When there is no post, on what post he can be taken back in service. He further argued that the worker in his claim has not pleaded that after his removal from service he was out of employment and in the absence of such plea and there being no evidence about non-employment, the workman is not entitled to any back wages.

15. I paid my attention to the rival arguments advanced by both the sides. The main thrust of the argument of the representative of non-petitioner is that there exists no post of Mali and as such he cannot be reinstated in service with out there being any post nor is entitled to any back wages. It is an admitted fact in this case that even prior to the removal of the worker there existed no post of Mali still he was given part time employment for maintaining trees, lawns and shrubs etc. It has nowhere come in the evidence of the management that at present there exist no trees, lawns and other shrubs in the premises of the non-petitioner. In the cross examination a specific question was put to Shri Sobhraj, management witness and in reply to the question the witness has specifically replied that the premises of the non-petitioner office including colony is 2 acres where there are still tree and plants etc. Another question was also put to him whether any part time person is kept for maintaining these trees and plants and in reply to this question the witness said that if any part time person is kept for it, he cannot say. From the above reply of the witness it can safely be inferred that the work for maintenance of trees, plants still exists and for such a work which is to be done on part time basis, existence of any permanent post is not required. It is settled law that if a person is employed on part time basis as Mali then such a person is a worker within the definition of workman under Section 2(s) of the Act. Therefore, the plea of the non-petitioner that there being no permanent post of Mali the worker is not entitled to be reinstated cannot be accepted nor the plea that he can not get back wages can be accepted. After turning down the plea of the non-petitioner, and after having held that removal of the worker is not justifiable and legal. I have no option but to agree with the argument advanced by the petitioner that the workman is entitled to be reinstated with full back wages. Accordingly this point is decided in favour of the worker.

16. As a result of the finding given above on point No. 1 and 2, the following award is passed in this reference:

"The Action of the management of Regional Director, Employees State Insurance Corporation, Jaipur is not justified in terminating the services of the workman Shri Mukesh Kumar Saini S/o Shri Babu Lal Saini, Part-time Gardener, w.e.f. 30-5-1995. Therefore, the order of termination is set aside and the workman is ordered to be reinstated in service with full back wages and other consequential benefits."

17. Award pronounced in the open court today the 3rd February 1999 which may be sent to the Central Government for publication as per rules.

M. C. TAYLOR, Judge.

नई दिल्ली, 1 जुलाई, 1999

का.प्र. 2091:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार थार सीमेंट लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-99 को प्राप्त हुआ था।

[सं. एल-29011/13/93-आई.आर. (विविध)]

बो. ए. र. बिड, हेल्थ अधिकार

New Delhi, the 1st July, 1999

S.O. 2091.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Thar Cement Ltd., and their workman, which was received by the Central Government on 1-7-99.

[No. L-29011/13/93-IR(M)]

B. M. DAVID, Desk Officer

ANNEXURE

CENTRAL INDUSTRIAL TRIBUNAL, JAIPUR

Case No. CIT 15/93

REFERENCE:

Government of India, Labour Ministry, New Delhi Order No. L-29011/13/93-IR (Misc.) dated 19-10-93.

Shri Dhashrath Singh and Others. . . Applicants.

Vs.

Manager, Khan Chuna, Pathar, Thar Cement Ltd. Office Sitapur Post Office Phaphar Tehsil Navalgarh (Jhunjhunu).

. . . Non-applicants.

PRESENT:

Presiding Officer: Shri M. C. Taylor, RHJS.
For the Applicants: Shri Hazari Lal.
For the Non-applicant: Shri Alok Fatehpuria.
Date of Award: 3-2-99.

AWARD

This reference has been sent by the Central Government to this tribunal for adjudication under Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter which would be referred as an Act). The terms of the reference are as under:

"Whether the action of the management of Thar Cement Ltd., Sitapur, P.O. Jhajhar Teh. Nawalgarh Distt. Jhunjhunu in terminating the services of the 4 workmen Shri Dhashrath Singh, Samudar Singh, Indraj Singh and Phoolchand w.e.f. 14-4-90 is legal and justified? If not, what relief these workmen are entitled to?"

2. In support of the reference, claim has been filed by the workers Sarvshri Dhashrath Singh, Samudar Singh, Phoolchand and Indraj Singh. In their claim the claimants (hereinafter would be referred as workmen) have pleaded that the workmen Dhashrath Singh, Samudar Singh, Indraj Singh and Phoolchand started working as workmen in the mines of the non-petitioner w.e.f. 1-12-88, and they were paid daily wages at the minimum rate declared by the State Government. The workmen discharged their duties arduously and honestly and there was no complaint of any type regarding their work before their termination w.e.f. 13-4-89. It has

been further pleaded that the workman and other workers of Thar Cement Limited found a trade union and submitted a charter of demands and in support of the charter of demand the union started dharna w.e.f. 13-4-90 and the petitioners extended support to them. The non-petitioner management with a view to seeking revenge and to bring the union an end on 14-4-90 without giving any notice to them or without giving any compensation in lieu of such notice and without following the procedure retrenched the workmen from the services and as such they breached the provisions of Section 25-F and 2(o) of the Act. The workmen on 10-5-90 requested the non-petitioner to take them back on service but they did not pay any head to their request rather they threatened and refused to take back in service. Before retrenching them no seniority list was prepared by them and as such they violated Rules 77 and 78 of Industrial Disputes (Central) Rules and Section 25-g of the Act. The non-petitioners raised an industrial dispute before the Central Labour Department and from there the matter under consideration has been referred to this tribunal. They have also pleaded that the petitioners have workers for more than 240 days in the non-petitioners institution and under the labour laws it was a must on their part to give compensation in lieu of notice before terminating their services. They did not do so, therefore, the non-petitioner has not only flouted the provisions of the Act but they have also flouted Articles 14, 16 and 39 of the Constitution and therefore, the petitioners are entitled to be reinstated back with all consequential benefits.

2. The non-petitioners on being summoned filed a reply to the statement of claim. In their reply the non-petitioner taking preliminary objections pleaded that the workmen were never retrenched by the non-petitioner rather on their own without any intimation and prior permission and without getting leave sanctioned they voluntarily absented themselves. As per Section 17(4) of the Certified Standing Orders applicable to the institution on account of their having remained absent for more than 8 days their services automatically came to an end. Therefore, their statement of claim is not maintainable. While replying the statement of claim paragraphwise the non-petitioner pleaded that the workmen were not terminated by the non-petitioner. If the petitioners are ready to work they are prepared to take them back on service. The non-petitioners also further alleged that it is not correct to say that any union was found and any dharna was given by them in support of the demands and that the workmen were removed for their extending support to the dharna. Rather they have their own absented from services voluntarily and their services came to an end automatically in terms of the Standing Orders applicable. In these circumstances neither provisions 2(o) read with Section 25-F of the Act is applicable nor any compliance of Section 25-F or g or h was required to be made. It was also further pleaded that on 10-5-90 no letter or intimation of any type was sent nor the workers were discharged from work nor they were refused to be taken back in service. Lastly, it was pleaded that provisions of Sections 25-f, g and h of the Act are not applicable and no breach of these provisions has been made, therefore, the reference is not maintainable and the workmen are not entitled to any relief.

3. After filing reply to the claim the file was fixed for recording evidence of the petitioners on 27-1-99. The learned representative for the non-petitioner appeared and pleaded no instructions. Consequently the matter was ordered to be heard ex-parte.

4. The learned representative of the workmen argued that the workmen in support of their claim filed their own affidavits. Since the workmen have submitted their affidavits have there cross-examined nor there is any evidence rebutting to their evidence. In these circumstances their evidence can not be doubted in any way. In their testimony all the workmen S/Shri Dhashrath Singh, Samudar Singh, Indraj Singh and Phoolchand have in once voice testified that they were the employees of the non-petitioner and they had worked for more than 240 days in a calendar year but while terminating their services on 14-4-90 the non-petitioner did not give any notice under Section 25-F of the Act and nor any compensation was paid in lieu of such notice.

5. From the above evidence of the workmen it is clearly established that the workmen had worked 240 days but the non-petitioner institution without complying with the provi-

Provisions of Section 25-F terminated their services. This act on the part of the non-petitioner is neither justifiable nor legal. Consequently the order of termination is liable to set aside and workmen are entitled to be reinstated with back wages and other consequential benefits.

6. As a result of foregoing discussions, following award is passed in this reference :

"Action of the management of Thar Cement Ltd., Sitapur P.O. Jhajhar Teh. Nawalgarh District Jhunjhunu in terminating the services of the 4 workmen Shri Dabbrath Singh, Shri Samudar Singh Shri Indaraj Singh and Phoolchand v.e.f. 14-4-90 is not legal and justifiable. All the workmen names above are entitled to be reinstated in service with full back wages and other consequential benefits."

7. Award is pronounced today the 3rd February, 1999 in the open court. Let the Award be sent to the Central Government for publication as per rules.

M. C. TAYLOR, Presiding Officer

नई दिल्ली, 1 जुलाई, 1999

का.प्र. 2092. — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बिसरा स्टोन लाईम कं. लि. के प्रबंधन के संवद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राऊरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-99 को प्राप्त हुआ था।

[स. एल-29012/64/94-आई.आर. (विविध)]
बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 1st July, 1999

S.O. 2092.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bisra Stone Lime Co. Ltd., and their workman, which was received by the Central Government on 1-7-99.

[No. L-29012/64/94-IR (Misc.)]

B. M. DAVID, Desk Officer.

ANNEXURE

IN THE COURT OF THE PRESIDING
OFFICER : INDUSTRIAL TRIBUNAL :
ROURKELA

Industrial Dispute Case No. 60/97(C)

Dated, the 7th June, 1999

PRESENT :

Shri A. K. Dutta, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Rourkela.

BETWEEN

The Executive Director
Bisra Stone Lime Co. Ltd.,

P.O. : Birnitrapur,
Distt. : Sundargarh-770033.

... 1st party.

AND

The General Secretary
Khani Mazdoor Sangh
P.O. : Birnitrapur,
Distt. : Sundargarh.

... 2nd party.

APPEARANCE :

For the 1st party.—Shri L. Palai Asst. Supdt.
(Pers)

For the 2nd party.—Shri Debendra Tiwari
2nd party-workman.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and Sub-Section (2A) of Section 10 of the Industrial Dispute Act, 1947 have referred the following disputes for adjudication vide No. L-29012/64/94-IR (Misc.) dt. 18-1-95 :

"Whether the action of Bisra Stone Lime Co. Ltd., in changing the designation of Shri Debendra Tiwari from Dozer Operator to EME Grade II or Category 8 vide reference No. 34/4110 is justified? If not, to what relief the workman is entitled?"

2. On 3-6-99 the representative of both parties were present. On that date, the workman filed a petition with a prayer to stop the proceeding as he has no interest to proceed with the case. So accordingly No Dispute Award is passed.

A. K. DUTTA, Presiding Officer.

नई दिल्ली, 1 जुलाई, 1999

का.प्र. 2093.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टाटा आयरन एंड स्टील कं. लि. के प्रबंधन के संवद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राऊरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-99 को प्राप्त हुआ था।

[स. एल-29012/79/92-आई.आर. (विविध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 1st July, 1999

S.O. 2093.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Tata Iron & Steel Co. Ltd., and their workman, which was received by the Central Government on 1-7-99.

[No. L-20012/79/92-IR (M)]

B. M. DAVID, Desk Officer

ANNEXURE

IN THE COURT OF PRESIDING OFFICER :

INDUSTRIAL TRIBUNAL : ROURKELA

Industrial Dispute Case No. 41/93(C)/27/97(C)

Dated the 28th April, 1999

PRESENT :

Sri Alak Kumar Dutta,

Presiding Officer,

Industrial Tribunal,

Rourkela.

BETWEEN :

The Superintendent,
Geological Department,
(Mines Division), TISCO LTD.PO : Jamshedpur, Singhbhum
(Bihar)

.. 1st party

And

The General Secretary,

North Orissa Workers Union,

PO : Rourkela,

Dist : Sundargarh

.. 2nd party

APPEARANCES :

For the 1st party—Sri M.Z.M. Ansari, Representative.

For the 2nd party—Sri B.S. Pati, General Secretary.

AWARD

The Govt. of India in the Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 have referred the following disputes for adjudication vide No. L-29012/79/92-IR(M) dt. 7-12-93 :

“Whether the action of the management of Geological Deptt. Mines Division, Tata Iron & Steel Company Ltd. Jamshedpur in terminating Sri Ugrasen Barik w.e.f. 1-8-91 and offering him employment for temporary period vide management's letter dated 11-9-92 and not accepted by the workman is justified ? If not, to what relief the workman is entitled to ?”

2. As per the statement of claim filed by the 2nd party workman, it is stated by him that he joined under the management in the year 1976, as a mazdoor. Thereafter he was given the job of Pump attendant in the year 1988. But all of a sudden, the management terminated his service without any written order. Thereafter the workman was called for an interview for the post of attendant (pump/drill). On 11-9-92 the management offered him temporary appointment for the post of mazdoor. But the workman replied that since he was a regular employee, he has to be redesignated. But the management did not give any reply. So the action of the management in terminating his service

is illegal and amounts to unfair labour practice. So he prays for relief.

3. In the written statement the management has stated that the dispute raised by the General Secretary of the union has no locus standi. The 1st party management undertake the assignment relating to prospecting project job, drilling operation for the purpose of mineral investigation by some outdoor section which are temporary & intermittent in nature. For such work, the management engages some labourers on contractual basis. So they are liable to be terminated without any notice. It admits that the 2nd party workman was engaged as pump attendant for a limited period. It further admits true that the 2nd party was offered appointment temporarily on contractual basis, but he neither joined nor sent any intimation. So there has been no breach of contract nor any illegality committed by the 1st party. Therefore the 2nd party is not entitled to any relief.

4. On the aforesaid pleadings, the following issues were framed :

- (i) Whether the union has locus-standie to represent this case ?
- (ii) Whether the dispute is maintainable ?
- (iii) Whether the action of the management of Geological Deptt. (Mines Division), Tata Iron & Steel Company Ltd. Jamshedpur in terminating Sri Ugrasen Barik w.e.f. 1-8-1991 and offering him employment for temporary period vide management's letter dated 11-9-1992 which was not accepted by the workman is justified ?
- (iv) To what relief the workman is entitled ?

5. In order to prove the case, the workman has examined himself as W.W. No. 1 and the management has examined three witnesses on their behalf. Both parties filed their documents in support of their case.

6. Issue nos. I to IV.—The grievance of the 2nd party is that initially he was appointed in a permanent post and subsequently his service was terminated from 1-8-1991 and again he was subsequently offered a post which was temporary in nature. Now, the only question which is to be decided as to whether the appointment of the 2nd party was temporary or permanent in nature.

7. The management has examined three witnesses. Witness No. 3 was working as Dy. Manager, TISCO and has stated that there was tripartite agreement between the management and the recognised union, of its workers (Ext. D) wherein clause 22 it was provided that if any workman is discharged or dismissed from service, he will prefer appeal before the Joint Arbitrators (Ext. D/1). He states that in the present case, the 2nd party did not prefer any appeal against the order of his termination before the Joint Arbitrators. Again he states that at times of need they engaged unskilled labourers on contractual basis where the investigation was taken up and if the casual temporary work is found to have served for 240 days in total, he would be offered temporary engagement as per standing orders of the

company. The 2nd party workman was working in 'D' Quarry at Joda and after the project of Joda was completed, the services of the 2nd party workman was automatically terminated in the end of July, 1991. Witness No. 2 also stated that the 2nd party workman was appointed on casual basis vide Ext. A. In Ext. A it is mentioned that the appointment of the 2nd party workman was temporary in nature for a period of 85 days. He states that the 2nd party workman was appointed as Pump Attendant on temporary basis for a period of 28 days.

8. The 2nd party workman has examined himself as W.W. No. 1. In his cross-examination he has admitted that he worked as a casual mazdoor from August, 1976 to December, 1981, and then engaged as a temporary Pump/Driller Attendant from January, 1982. He admits working in several mines and he was given appointment for 85 days from time to time temporarily in writing. He admits that he was never engaged as a regular temporary worker, but was engaged as a temporary worker only. He has filed two experience certificate vide Ext. 2 & 3. Ext. 2 reveals that he worked as Pump Attendant from 10-5-1988 to 27-5-1989 with intermittent breaks and then he was discharged. Ext. 3 shows that the O.P. was working as a pump attendant on temporary basis from February, 1988 to June, 1989.

9. From the evidence of witnesses of the management and from own admission of the 2nd party workman there is no doubt that the 2nd party was never appointed as a permanent worker. On the other hand it is found from his oral evidence as well as from the documents filed Ext. 2 & 3, that he was all along working as a temporary worker with intermittent breaks after 85 days. So the management has not committed any irregularities by discharging him from service. He was again offered post on temporary basis and by that the management has not behaved unjustifiably. That apart the 2nd party workman has also not preferred appeal before the Joint Arbitrators as provided under the tripartite agreement. Hence the case is not maintainable.

10. One union has filed this case on behalf of the 2nd party workman. The law is well settled that even an unrecognised union can take up the case of an individual worker which makes an industrial dispute. Accordingly the workman is not entitled to any relief.

Accordingly the reference is answered in favour of the management.

ALAK KUMAR DUTTA, Presiding Officer.

नई दिल्ली, 1 जुलाई, 1999

का.आ. 2094.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बिसरा स्टोन लाईम कं. लि. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, राऊरकेला के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-99 को प्राप्त हुआ था।

[सं० एल-29012/86/94-आई.आर. (विधि)]

बी. एम. डेविड, ईस्क अधिकारी

New Delhi, the 1st July, 1999

S.O. 2094.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Rourkela as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bisra Stone Lime Company Ltd., and their workman, which was received by the Central Government on 1-7-99.

[No. L-29012/86/94-IR(Misc.)]

B. M. DAVID, Desk Officer.

ANNEXURE

IN THE COURT OF THE PRESIDING OFFICER:
INDUSTRIAL TRIBUNAL : ROURKELA

Industrial Dispute Case No. 68/97 (Central)

Dated, the 24th May, 1999.

PRESENT :

Shri A. K. Dutta, O.S.J.S. (Sr. Branch)
Presiding Officer, Industrial Tribunal,
Rourkela.

BETWEEN :

The Executive Director
Bisra Stone Lime Company Ltd.,
PO : Birmitrapur, Distt. Sundergarh .. Ist party.

AND

Smt. Julia Sorang, Ex-Leader
Kapas West Mines
M/s. B.S.L. Co. Ltd.,
At/FO : Deekaran Dafai (Kapas)
Via : Birmitrapur
Distt. Sundergarh-770033. .. IInd party.

APPEARANCE :

For the Ist party.—None.

For the IInd party.—None.

AWARD

The Government of India in Ministry of Labour Department in exercise of their power conferred under clause (d) of sub-section (1) and sub-section(2A) of section 10 of the Industrial Disputes Act 1947 have referred the following dispute vide reference No. L-29012/86/94 IR(Misc.) dated 10-2-95 for adjudication :

"Whether the action of the management of Bisra Stone Lime Company Limited, P.O. : Birmitrapur, Distt. Sundergarh in superannuating Smt. Julia Sorang w.e.f. 18-2-88 under Voluntary Retirement Scheme was justified? If not, what relief the workman is entitled to?"

2. The case was fixed on 19-5-99 for hearing. Since neither of the parties appeared before this Tribunal on that date, it can be presumed that, at present there is no dispute between them or they have amicably settled the dispute outside the Court in the mean time. Accordingly No Dispute Award is passed.

A. K. DUTTA, Presiding Officer.

नई दिल्ली, 1 जुलाई, 1999

“अवार्ड”

दिनांक 23-12-98

का.आ. 2095:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भी. एस. गुप्ता एण्ड कम्पनी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-99 को प्राप्त हुआ था।

[सं. एल-20015/1/95-आई.आर. (विविध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 1st July, 1999

S.O. 2095.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. S. Gupta and Co. and their workman, which was received by the Central Government on 1-7-99.

[No. L-29015/1/95-IR(Misc.)]

B. M. DAVID, Desk Officer.

अनुबंध

केन्द्रीय औद्योगिक न्यायाधिकरण, जयपुर।

प्रकरण संख्या : सी.आई.टी. 50/96

रेफरेंस : भारत सरकार श्रम मंत्रालय, नई दिल्ली की अधि-

सूचना क्रमांक एल-29015/1/95-आईआर (मिस.)

दिनांक 16-8-96

अनुबंध गुप्ता पुत्र श्री हरिराम गुप्ता आयु 76 वर्ष

निवासा शास्त्री निवास, गांधी नगर, भीलवाड़ा।

प्रार्थी

बनाम

मैगर्स एम. गुप्ता एण्ड कम्पनी (आईटीए विभाग)

इम्पोर्ट एक्सपोर्ट देहली बिल्डिंग, गोपाल जी का रास्ता

जयपुर। अप्रार्थी

उपस्थित

पीठासीन अधिकारी : श्री मंगल चंद टेलर, आर.एच.जे.एम.

प्रार्थी की ओर से : श्री नीरज भट्ट

अप्रार्थी की ओर से : कोई उपस्थित नहीं।

ये अधिसूचना निम्न लिखित बिन्दु का निर्णय करने हेतु प्रेषित की गई है :—

“Whether the action of the management of M/s. S. Gupta & Co. in terminating the services of Shri Bal Kishan Gupta w.e.f. 31-7-78 is justified? If not, to what relief the workman is entitled?”

प्रार्थी प्रतिनिधि नीरज भट्ट उपस्थित। विपक्षी की ओर से कोई हाजिर नहीं है। श्री भट्ट प्रार्थी प्रतिनिधि ने जाहिर किया कि इस प्रकरण में वे आगे कार्यवाही नहीं करना चाहते हैं। अतः प्रार्थी प्रतिनिधि के विवाद आगे नहीं चलाना चाहने के कारण विवाद में नो डिस्प्यूट अवार्ड पारित किया जाता है। जो केन्द्रीय सरकार को वास्ते प्रकाशनार्थ भेजा जावे।

मंगल चन्द टेलर, न्यायाधीश

नई दिल्ली, 5 जुलाई, 1999

का.आ. 2096 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुम्बई पोर्ट ट्रस्ट के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. -2, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-7-99 को प्राप्त हुआ था।

[सं. एल-31012/23/97-आई.आर. (विविध)]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 5th July, 1999

S.O. 2096.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Mumbai Port Trust and their workman, which was received by the Central Government on the 5-7-99.

[No. L-31012/23/97-IR (Misc.)]

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

Shri S. B. Panse, Presiding Officer.

REFERENCE NO. CGIT-2/85 OF 1998

Employers in relation to the management of Mumbai Port Trust

AND

Their Workmen.

APPEARANCES :

For the Employer : Mr. M. B. Anchan, Advocate.

For the Workmen : Mr. Jaiprakash Sawant, Advocate.

Mumbai, dated 17th June, 1999

AWARD

The Government of India, Ministry of Labour by its Order No. L-31012/23/97-IR (M) dated 29-6-1998, had referred to the following Industrial Dispute for adjudication :

“Whether Shri M.R. Surve, Asstt. Foreman Diver do come, under the Industrial finition of workmen under the Industrial Disputes Act 1947, if so, then whether the action of the Management of Bombay Port Trust in promoting Mr. Kale to the post of Junior Foreman Diver in supersession of Mr. M.R. Surve is justified ? If not, then what relief the workman is entitled to ?”

2. The workman filed a Statement of Claim at Exhibit-7. He contended that he is a workman as defined under section 2(s) of the Industrial Disputes Act of 1947. He was class III employee of the Mumbai Port Trust. His wages and other service conditions are settled under among others, the provisions of the Industrial Disputes Act of 1947.

3. The workman averred that he was appointed by the Chief Engineer of Mumbai Port Trust as a driver Grade-III on 25-1-63. Then he was promoted in different categories and he was Assistant Foreman Diver on 28-12-93. It is submitted that infact he was entitled to said promotion in September, 1993.

4. The workman averred that he was entitled to the post of junior Foreman diver on 19-8-94 but it was given to one Mr. Kale superseding his claim. He made several representations for the said injustice. but, it was not considered. He was given discriminatory treatment by the management. He suffered hardship monetarily and otherwise also. Under such circumstances it is averred that the action of the management in promoting Kale is illegal and irregular. He prays that the record may be passed declaring him to the post of junior Foreman Driver w.e.f 19-8-94 with consequential benefits.

5. The management resisted the claim by the written statement (Exhibit-8). It is averred that Surve is not a workman within the meaning of section 2(s) of the Industrial Disputes Act of 1947. His wages are more than Rs. 1600/- and this nature of work is of a supervisory nature.

6. The management pleaded that the post of Junior Foreman Diver is filled up by promotion and from direct recruit. There are eligibilities to the said post and the posts are filled up as per the forty point promotional roster. It is submitted that while promoting the management had followed all the procedure which is required and no injustice was caused to Surve. Kale is from SC category. It is submitted that Surve is not entitled to any reliefs as claimed.

7. The issues are framed at Exhibit-10. The issues and my findings thereon are as follows :—

Issues	Findings
1. Whether Mr. M. R. Surve, Assistant Foreman, Diver is workman as per section 2(s) of the Industrial Disputes Act of 1947 ?	Yes.
2. If yes, whether the action of the management of Bombay Port Trust in promoting Kale to the post of Junior Foreman diver in supervision of Mr. Surve is justified ?	Yes.
3. If not, then what relief the worker is entitled to ?	Does not survive.

REASONS

8. Shri M. R. Surve (Ex-14) affirmed that whatever stated by him in the Statement of Claim is true and correct. Infact he did not specify how he is a workman. But the management had not lead any evidence, oral or documentary showing that Surve is not a workman contemplated under section 2(s) of the Industrial Disputes Act of 1947. In the written argument which is filed by the management at Exhibit-17 it is categorically stated by them that it was drawing wages more than Rs. 1600/- p.m. and was holding the post of supervisory nature. But there is no evidence to that effect. The burden is on the management. Under such circumstances due to the lack of evidence I am of the view that Surve is a workman within the meaning of section 2(s) of the Industrial Disputes Act of 1947. The issue is answered accordingly.

9. The post of Junior Foreman Diver becomes incharge of salvage section, the vital section of Chief Engineers department. It is necessary that the persons holding that post should have a complete knowledge and experience of salvage work.

9. The post of Junior Foreman Diver becomes diver on the schedule of the Civil Engineering department. It is a single post in that category. The method of recruitment for the post is by promotion failing which by direct recruitment. The eligibility is, education up to SSC and five years experience as an Assistant Foreman diver. In that case the promotion to the fitter category is from Assistant Foreman Diver a single post in the class III cadre for the Civil Engineering department. It is not in dispute that the vacancy of junior foreman diver had reservation roster. Point No. 1 of the forty point roster was reserved for SC candidates. However being a single vacancy by apply 50 per cent rule it was treated as unreserved and filled in by General candidate, Shri Leo Samuel in the year 1986. The next vacancy of junior diver at roster point No. 2 was reserved for SC candidate against the carry forward reservation. Since no SC candidate was available in the post of Assistant Foreman diver the vacancy was dere-served vide trustees resolution (TR) 217 dated 6th April, 1993 and filled in by general candidate.

Shri J. F. D'Souza on 21st September, 1993. In terms of para 9.42 of summary of order on reservation of SC/ST (Exhibit-1) to the notes of argument which stated that on dereservation of vacancy reserved for SC & ST candidates the administration has to make all efforts to see that the reserved category candidate will be available for the next recruitment years.

11. It is argued that in view of that situation it was necessary to fill in the next vacancy of junior foreman diver by SC category candidate. Since no SC category candidate was available to fill in the feeder post Assistant Foreman diver the post of a junior foreman diver was to be filled in by direct recruitment by advertising the post as reserved for SC category candidate.

12. It is argued on behalf of the management that if the post of junior foreman diver would have been filled in by direct recruitment there was a possibility of either non-availability of the SC category candidate or SC candidate having less experience and knowledge would have been appointed. Since the incumbent of the post of Jr. Foreman Diver becomes an Incharge of the Section the administration did not want to take risk in posting such person to the post by direct recruitment. Therefore while dereserving vacancy at Roster Point No. 2 vide TR No. 217 dated 1st April, 1993 (Ex-2), it was decided vide para 4 of the said TR No. 217 dated 6th April, 1993, that Shri S. L. Kale, S.C. candidate is available in the category of Diver Grade-I and he could be considered for promotion to the post of Jr. Foreman Diver in the next recruitment year on Superannuation of Shri J. F. D'Souza w.e.f. 1st July, 1994. The Mumbai Port Trust further submits that the post of Asstt. Foreman Diver is a Class-III feeder post for the promotional post of Jr. Foreman Diver and was to be filled in by direct recruitment. The then vacancy of Asstt. Foreman Diver was reserved for S.T. Candidate at Roster Point No. 2 against the carry forward reservation on the 100 point Reservation Roster for direct recruitment. If the said post would have been filled in by direct recruitment then it was to be filled in by S.T. candidate only. In that case S. C. candidates could not have been made available in the feeder post of Asstt. Foreman Diver for considering him for promotion to the post of Jr. Foreman diver, which was reserved for S.C. candidate. In view of whatever stated herein above, the management had decided to convert the post of Asstt. Foreman Diver from direct recruitment to promotional post. Chairman's sanction was obtained accordingly (Ex-3). Whereupon 100 point reservation roster for direct recruitment was converted into 40 point reservation roster for promotional post in which point No. 1 was reserved for S.C. and point No. 2 for unreserved.

13. It is further argued on behalf of the management that the Departmental Promotion Committee met on 20-7-1993 to assess the suitability of Diver Grade I to the post of Assistant Foreman Diver. Since there was only one post of Assistant Foreman Diver the senior most person Shri M. R. Surve, General Candidate could be only considered for promotion to the post of Assistant Foreman Diver. In such situation due to non-availability of S.C. candidate in

the feeder post of Assistant Foreman Diver, the post of Jr. Foreman Diver would again have to be filled in by direct recruitment by making available S. C. candidate. Therefore, administration has decided to create one supernummary post of Assistant Foreman Diver and to promote Shri S.L. Kale, S.C. candidate against the said supernummary post so that he could be available as S.C. candidate in the feeder post of Assistant Foreman Diver for promotion to the next vacancy of Jr. Foreman Diver which would occurred on superannuation of Shri J. F. D'Souza with effect from 1-7-1994 and accordingly both S/Shri M. R. Surve and S. L. Kale were promoted as Asstt. Foreman Diver w.e.f. 28-12-1993. The Mumbai Port Trust further submits that sanction to the supernummary post of Assistant Foreman Diver was obtained for the period up to 30-6-1994. However, Shri S.L. Kale was allowed to continue to work as Assistant Foreman Diver by keeping the post of Diver Grade I in abeyance till finally he got promotion as Jr. Foreman Diver as sanctioned vide letter No. Secy|P|GEE|E-SCT|19516 dtd. 24-12-1993 (Ext-15). As such the contention of Shri M. R. Surve that Shri S. L. Kale was not Asstt. Foreman Diver at the time of his promotion to the post of Jr. Foreman Diver is incorrect. Shri S. L. Kale has drawn the wages for the month of July 1994 and August 1994 in the capacity of Assistant Foreman Diver. It can be seen from the copies of Pay Slips (Ex-5) which shows that Shri Kale was Asstt. Foreman Diver at the time of promotion to the post of Jr. Foreman Diver.

14. It can be seen that by the above said exercise the administration has taken care of its responsibilities of filling the vacancy of junior foreman diver by making available SC candidate who should also be able and competent to become an incharge of Salvage section Kale had proved his ability. On the other hand Surve was not even cleared by DPC to the temporary post of Assistant Foreman Diver.

15. It is further argued that if the post would have been filled by advertisement the post should have been clearly kept for SC candidate and Surve being of a General category he is not at all entitled to the said post, Surve (Exhibit-14) in its cross-examination in categorical term admits it is a fact that Kale's post is from a reserved category. It is therefore, he has no right over that post. As this is the situation I do not find any merit in the case of Surve that he is entitled to the post of junior foreman diver from 19-8-94.

16. Mr. Sawant, the Learned Advocate for the workman placed reliance of Surendra Narayan Singh & Ors, Vs, State of Bihar 1995 LAB IC 1864, where in Their Lordships observed that reserved vacancies cannot be carried forward. It is further observed that provisions in this regard is absent in 1955 rules of Bihar Judicial services recruitment rules. It can be seen that the facts of that case are quite different from the facts before me. It has no relevancy.

17. For all these reasons I record my findings on the issues accordingly and pass the following order :—

ORDER

The action of the management in promoting Kale to the post of Junior Foreman Driver is justified.

S. B. PANSE, Presiding Officer

नई दिल्ली, 29 जून, 1999

का.आ. 2097:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स टिस्को के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. -2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-20012/(20)/94-आई.आर. (सी-I)]

श्याम सुन्दर गुप्ता, डेस्क अधिकारी

New Delhi, the 29th June, 1999

S.O. 2097.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s TISCO and their workman, which was received by the Central Government on 28-6-99.

[No. L-20012/(20)/94-IR (C-I)]

S. S. GUPTA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 13 OF 1995

PARTIES :

Employers in relation to the management of Sijua Colliery of M/s. Tisco. Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen : None.

On behalf of the employers : None.

STATE : Bihar. INDUSTRY : Coal.

Dated, the 18th June, 1999

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(20)/94-I.R. (Coal-I), dated, the 21st February, 1995.

SCHEDULE

"Whether the action of the management of TISCO Ltd. in suspending w.e.f. 10-6-92, Shri Jagdish Prasad Asstt. Driller at Surjna Colliery as a punishment after domestic enquiry and also issued him another chargesheet dt. 7-10-92 on the same ground is justified ? If not, to what relief the workman is entitled ?"

2. In this reference none of the parties appeared before this Tribunal nor took any steps in spite of the issuance of notices to them again and again leading to an inference of non-existence of any industrial dispute between the parties. Under such circumstances, a 'No dispute' Award is being rendered and the reference is disposed of on 'No dispute' Award basis, on the presumption of non-existence of any industrial dispute between the parties presently.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 29 जून, 1999

का.आ. 2098 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ई. सी. एल. के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं. -2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-20012/64/93-आई.आर. (सी-I)]

श्याम सुन्दर गुप्ता, डेस्क अधिकारी

New Delhi, the 29th June, 1999

S.O. 2098.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. E. C. Ltd. and their workman, which was received by the Central Government on 28-6-99.

[No. L-20012/64/93-IR (C-I)]

S. S. GUPTA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 12 OF 1994

PARTIES :

Employers in relation to the management of Kapasara Area of M/s. Eastern Coalfields Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen : None.

On behalf of the employers : None.

STATE : Bihar. INDUSTRY : Coal.

Dated, the 18th June, 1999

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/64/93-I.R. (Coal-I), dated the 22nd December, 1993.

SCHEDULE

"Whether the action of the management of M/s. Eastern Coalfields Ltd., Kapasara Area in terminating the services of Shri Jahur Mia, Driver, Nirsha Colliery w.e.f. 28/31-3-92 is justified? If not, to what relief the concerned workman is entitled to?"

2. In this reference only the workman side filed its W.S. and thereafter both the parties abstained from taking any further steps in this reference inspite of the issuance of notices to them again and again leading to an inference of non-existence of any industrial dispute between the parties. The reference is pending since later part of 1993 and it is of no use to drag the same for year after year. Under such circumstances, a 'No dispute' Award is being rendered and the reference is disposed of on 'No dispute' Award basis on the presumption of non-existence of any industrial dispute between the parties.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 29 जून, 1999

का.आ. 2099:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गण में केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अन्तर्गण में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं.-2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-20012/97/95-आई.आर. (सी-1)]

श्याम सुन्दर गुप्ता, डेस्क अधिकारी

New Delhi, the 29th June, 1999

S.O. 2099.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. -2, Dhanbad as shown in the Annexure in the Industrial

Dispute between the employers in relation to the management of M/s. B.C.C. Ltd. and their workman, which was received by the Central Government on 28-6-99.

[No. L-20012/97/95-IR (C-I)]

S. S. GUPTA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 18 OF 1996

PARTIES :

Employers in relation to the management of Govindpur Area No. 3 of M/s. BCCL and their workmen.

APPEARANCES :

On behalf of the workmen : None.

On behalf of the employers : None.

STATE : Bihar. INDUSTRY : Coal.

Dated, the 21st June, 1999

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/97/95-I.R. (Coal-I), dated, the 29th February, 1996.

SCHEDULE

"Whether the demand of the Union for re-instatement with full back wages in respect of Shri Kesho Dhobi, Magazine Clerk dismissed w.e.f. 30th June, 1992 is justified? If so, to what relief is the concerned workman entitled?"

2. In this reference none of the parties turned up before this Tribunal nor took any steps leading to an inference of non-existence of any industrial dispute between the parties presently. The reference is pending since 1996 and it is of no use to drag the same any more for taking steps by the parties. Under such circumstances, a 'No dispute' Award is being rendered and the reference is being disposed of on 'No dispute' Award basis on the presumption of non-existence of any industrial dispute between the parties presently.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 29 जून, 1999

का.आ. 2100 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गण में केन्द्रीय सरकार मैसर्स सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों

और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं.-2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-20012/(176)/94-आई.आर. (सी-I)]
श्याम सुन्दर गुप्ता, डेस्क अधिकारी

New Delhi, the 29th June, 1999

S.O. 2100.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. C. C. Ltd. and their workman, which was received by the Central Government on 28-6-99.

[No. L-20012/(176)/94-IR(C-I)]
S. S. GUPTA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 80 OF 1995

PARTIES :

Employers in relation to the management of
Central Coalfields Ltd. and their workmen.

APPEARANCES :

On behalf of the workmen : None.

On behalf of the employers : None.

STATE : Bihar. INDUSTRY : Coal.

Dhanbad, the 18th June, 1999

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(176)/94-I.R. (Coal-I), dated, the 8th May, 1995.

SCHEDULE

"Whether the workman Shri Nirmal Kumar Roy, Assistant Machine Man, Grade 'D' (Offset) is entitled for promotion to the post of Machine Man (Offset) Grade 'C' as he is performing the duties of Machine Man w.e.f. 30-3-1992? If not, to what relief the workman is entitled and from what date?"

2. In this reference none of the parties turned up before this Tribunal nor took any steps leading to an inference of non-existence of any industrial dispute between the parties. The reference is pending since 1995 and it is of no use to drag the same any more for taking steps by the parties. Under such circumstances, a 'No dispute' Award is being rendered and the reference is disposed of on 'No dispute' Award basis on the presumption of non-existence of any industrial dispute between the parties presently.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 29 जून, 1999

का.मा. 2101:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सी. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, सं.-2, धनबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-6-99 को प्राप्त हुआ था।

[सं. एल-24012/(142)/85-डी IV (बी)]
श्याम सुन्दर गुप्ता, डेस्क अधिकारी

New Delhi, the 29th June, 1999

S.O. 2101.—In pursuance of Section 17 of the Industrial Dispute Act, 1947. (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. C. C. Ltd. and their workman, which was received by the Central Government on 28-6-99.

[No. L-24012(142)/85-D. IV (B)]
S. S. GUPTA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT
DHANBAD.

PRESENT :

Shri B. B. Chatterjee, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 129 OF 1986

PARTIES :

Employers in relation to the management of
Raihara Colliery of M/s. C.C. Ltd. and
their workmen.

APPEARANCES :

On behalf of the workmen : None.

On behalf of the employers : None.

STATE : Bihar. INDUSTRY : Coal.

Dhanbad, the 21st June, 1999

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-24012 (142)/85-D.IV(B), dated the 4th March, 1986.

SCHEDULE

"Whether the action of the Management of Rajhara Colliery of M/s. C.C. Ltd., in contemplating to retire Sh. Raj Karan Mahato, W.E. Driver, Rajhara Colliery with effect from 13-4-86, treating his date of birth as 14-4-26 is justified? If not, to what relief the workman is entitled?"

2. Soon after the receipt of the order of reference notices were duly served upon the parties. Both the parties appeared before this Tribunal and filed their respective W.S. documents etc. But subsequently at the stage of oral evidence both the parties abstained from appearing before this Tribunal and taking further steps, inspite of issuance of notices to them again and again. Under such circumstances, a 'No dispute' Award is being rendered and the reference is disposed of on 'No dispute' Award basis on the presumption of non-existence of any industrial dispute between the parties presently.

B. B. CHATTERJEE, Presiding Officer

नई दिल्ली, 5 जलाई, 1999

का.आ. 2102:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गण में, केन्द्रीय सरकार मैसर्स एच. पी. सी. एल. के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अन्तर्बंध में निविष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, विशाखापट्टनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-7-99 को प्राप्त हुआ था।

[सं. एल-30012/35/97-आई.आर. (सी-I)]

श्याम सुन्दर गुप्ता, डेस्क अधिकारी

New Delhi, the 5th July, 1999

S.O. 2102.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Visakhapatnam as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. H. P. C. Ltd. and their workman, which was received by the Central Government on 1-7-99.

[No. L-30012/35/97-IR(C-I)]

S. S. GUPTA, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, VISAKHAPATNAM

PRESENT:

Sri K. Satyanand, B.Sc., LL.M., Chairman, Industrial Tribunal & Presiding Officer, Labour Court, Visakhapatnam.

I.T.I.D. (c) 19/97

Dated: 9th day of December, 1998

Under No. L-30012/35/97-IR (C-I) dated 29th August, 1997 Ministry of Labour, Government of India.

BETWEEN

The General Secretary,
Petroleum Workers Union,
C/o H.P.C.L., P.B. No. 15,
Malkapuram, Visakhapatnam. ... Workmen

AND

The General Manager,
M/s. H.P.C.L. Visakha Refinery,
F.O. Malkapuram,
Visakhapatnam-11. ... Management.

This dispute coming on for hearing before me in the presence of Sri Y. V. Sanyasi Rao, Advocate for Management. On perusing the material papers on record the court passed the following:

AWARD

Vakalat not filed. No representation for workmen called absent. I.D. closed passing nil award on account of the default in appearance and filing claim statement by the workmen.

Given under my hand and seal of the court this the 9th day of December, 1998.

Sd/-

K. SATYANAND, Chairman &
Presiding Officer

नई दिल्ली, 30 जून, 1999

का.आ. 2103:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गण में, केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अन्तर्बंध में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, II, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-6-99 को प्राप्त हुआ था।

[सं. एल-12012/272/98-आई.आर. (बी-II)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 30th June, 1999

SO 2103.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workman, which was received by the Central Government on 29-6-1999.

[No. L-12012/272/98-IR(B-II)]

C. GANGADHARAN, Desk Officer

ANNEXURE

New Delhi, the 30th June, 1999

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II, MUMBAI
PRESENT :

Shri S. B. Panse, Presiding Officer.

Reference No. CGIT-2/90 of 1999

Employers in relation to the management of
Central Bank of India.

AND

Their Workmen.

APPEARANCES :

For the Employer : Mr. T. R. Behera,
Representative.

For the Workmen : Mr. R. F. Monteiro,
Representative.

Mumbai, dated 18th June, 1999

AWARD

The Government of India, Ministry of Labour
by its Order No. L-12012/272/98-IR(B-II) dated
20-4-1999 had referred to the following Industrial
Dispute for adjudication.

"Whether the action of the Central Bank of
India, Mumbai by terminating the services
of S/Shri S. B. Manchekar and Santhosh
S. Panchal is justified ? If not, what relief
the workmen are entitled to ?"

2. Today the parties appeared before me and
filed a purshis (Exhibit-4) contending that the
matter is settled. The workman who were present
in the court stated that as they are employed again
now there is no dispute between management and
them. They have also filed Memorandum of Settle-
ment as per Rule-56 which is signed by the work-
man and the management. It is signed before the
Conciliation officer. Under such circumstances I
pass the following order :

ORDER

The reference is disposed off as settled.

S. B. PANSE, Presiding Officer

नई दिल्ली, 30 जून, 1999

का.आ. 2104.—औद्योगिक विवाद अधिनियम, 1947
(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय
सरकार बैंक ऑफ बड़ोदा के प्रबंधन के संबंध
नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट
औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण,
जयपुर के पंचाट का प्रकाशित करती है, जो केन्द्रीय
सरकार को 29-6-99 को प्राप्त हुआ था।

[सं. एल-12012/202/96-आई.आर. (बी-II)]

सी. गंगाधरन, हेतु अधिकारी

S.O. 2104.—In pursuance of Section 17 of the
Industrial Dispute Act, 1947 (14 of 1947), the
Central Government hereby publishes the award of
the Central Government Industrial Tribunal, Jaipur
as shown in the Annexure in the Industrial Dispute
between the employers in relation to the manage-
ment of Bank of Baroda and their workman, which
was received by the Central Government on
29-6-1999.

[No. L-12012/202/96-IR(B-II)]
C. GANGADHARAN, Desk Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,
जयपुर
केस नं. सी.आई.टी. बी-3/97
विजप्ति संख्या एल-12012/202/96-आई.आर. (बी-II)
श्री आर. सी. जैन,
स्टेट एक्जीक्यूटिव कमेटी,
बी. एम. एस. राजस्थान,
80, बजरंग विहार, गोपालपुरा,
रेलवे फाटक, टोंक रोड, जयपुर।

बनाम

क्षेत्रीय प्रबंधक,
बैंक ऑफ बड़ोदा,
अजमेर।

उपस्थित :

बी. एम. एस. राजस्थान	—कोई नहीं
की ओर से	
क्षेत्रीय प्रबंधक,	
बैंक ऑफ बड़ोदा की ओर से	—श्री तेज प्रकाश शर्मा, एडवोकेट

पंचाट तारीख - 14-6-99

पंचाट

केन्द्रीय सरकार द्वारा उक्त विजप्ति के जरिए
निम्न विवाद तय किए जाने हेतु निर्दिष्ट किया गया है —

"Whether the action of the management of Bank
of Baroda, Ajmer in dismissing the services
of Shri P. K. Shivkani vide letter dated
18-3-91 is legal and justified ? If not, to
what relief the said workman is entitled?"

पक्षकारों को रजिस्टर्ड नोटिस जारी किए गए। दोनों पक्षकारों पर नोटिस की तामील हो गई। भारतीय मजदूर संघ, राजस्थान की ओर से उसके सदस्य सचिव श्री आर. सी. जैन उपस्थित नहीं हुए, न क्लेम पेश किया। बैंक ग्राफ बड़ौदा की ओर से श्री तेज प्रकाश शर्मा, एडवोकेट उपस्थित भारतीय मजदूर संघ को कई अवसर क्लेम पेश करने के लिए जा चुके हैं परन्तु संघ की ओर से न तो कोई उपस्थित आया न ही कोई क्लेम पेश किया गया जिससे ऐसा प्रतीत होता है कि उक्त संघ को क्लेम प्रस्तुत करने में कोई रुचि नहीं है।

चूंकि भारतीय मजदूर संघ की ओर से कोई क्लेम प्रस्तुत नहीं किया गया है अतः विवाद रद्दित पंचाट पारित किया जाता है। पंचाट की एक प्रतिलिपि भारत सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17(1) के अधीन प्रकाशमार्थ प्रेषित की जाये।

ह/-
पीठासीन अधिकारी

नई दिल्ली, 30 जून, 1999

का.आ. 2105.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनाईटेड इंडिया इश्यूरेस कं. लि. के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है जो केन्द्रीय सरकार को 29-6-99 को प्राप्त हुआ था।

[सं. एल-17012/21/88-डी-4 (ए)/डी-1 (बी)]

सी. गंगाधरन, डैस्क अधिकारी

New Delhi, the 30th June, 1999

S.O. 2105.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of United India Insurance Co. Ltd. and their workman, which was received by the Central Government on 29-6-1999.

[No. L-17012/21/88-D-4(A)D-I(B)]

C. GANGADHARAN, Desk Officer

ANNEXURE

CENTRAL INDUSTRIAL TRIBUNAL, JAIPUR

Case No. CIT 25/89

REFERENCE :

Government of India, Ministry of Labour,
New Delhi Order No. L-17012/21/98-
D-4(A)D-1(B) dated 31-1-89.

Rajendra Kumar Sharma,
S/o Shri Ram Kishor Sharma,
Aged 23 years,
Resident of Zone Mishran,
Post Jone,
Tehsil Dausa,
Distt. Jaipur.

....Petitioner

Vs.

1. United Insurance Company Ltd.
through Divisional Manager,
Digamber Jai Dharamshala Building,
M. I. Road,
Jaipur.

2. Branch Manager Branch I,
United Insurance Company Ltd.,
Jangid Bhawan,
M. I. Road,
Jaipur.

....Non-petitioners

PRESENT :

Mr. M. C. Taylor, PHJS, Presiding Officer.

For the Petitioner : Shri J. K. Agarwal.

For the Non-petitioner : Shri S. K. Singhal.

Date of Award : 18-9-98

AWARD

This reference has been made by the Central Government under Section 10(1) of the Industrial Disputes Act, 1947 (which would be referred as I.D. Act hereinafter). The terms of the reference are as under :

“Whether the action of the management of United India Insurance Co. Ltd., Jaipur, is justified in terminating the services of the workman (Shri Rajendra Kumar Sharma S/o Shri R. K. Sharma) when he has completed 240 days of service in a calendar year and management also appointed junior workman in place of Shri R. K. Sharma after termination of service of workman ? If not to what relief is the workman entitled and from what date ?”

2. The workman Rajendra Kumar Sharma has filed his statement of claim alleging that he has worked in two branches of United Insurance Company situated at M. I. Road for 244 days. That on 3-8-84 he was removed from the services and persons junior to him including Shri Jagdish Bairwa were retained. He has also alleged that there was a specific order from the Company that who-so-ever

has completed the services for 240 days should be taken back in service and his services should be regularised. In the light of this order, services of other persons excluding himself have been regularised. By doing so, the management has not complied with the provisions of Section 25-F, G and H of the I.D. Act. He has also alleged that the nature of his job was permanent as he was not employed on temporary basis nor as a Badli worker. In the end, he has prayed that he should be ordered to be taken back in service with all back wages and continuity of service with costs.

3. The worker in support of his claim has submitted his own affidavit and has relied upon.

4. The non-petitioners have contested the claim and have submitted the reply. In their reply, they have alleged that the services of the petitioner were purely temporary and he was casual daily wager. He has worked only for 73 days, therefore, no industrial dispute arises on this very ground. The reference deserves to be turn-down. It has also been alleged that the petitioner has wrongly stated that he has worked for 244 days. It has also been alleged that his services being purely temporary and on daily wages, automatically came an end. So no question of retaining the junior persons arises. It has also been alleged that no person named Jagdish Bairwa had ever been in their service. Non-petitioners have also alleged that the provisions of Section 25-F, G and H of the I.D. Act do not apply so the question of not complying with them does not arise. The petitioner has not been removed from the services, nor any provisions of the Constitution or law have been breached, so the question of taking him back in service also does not arise. In the end, in the light of above allegations in the preceding lines, the non-petitioners have prayed that the claim of the petitioner deserves to be turn down and Award of no dispute should be awarded.

5. In support of their reply, the non-petitioners have filed the affidavits of Sarvshri Swaroop Chand Gupta, Nathulal Mehta, Dr. Ramnath, Vivek Saxena, K. K. Nagpal, and have relied upon Ex. M-1 to M-49 documents.

6. Both the sides were heard and the evidence as available on file was scanned and perused. For answering this reference, following issues are to be decided :

1. Whether the action of the management is justified in terminating the services of the petitioner ?

2. What relief the petitioner is entitled to ?

7. Both the issues will be decided in order referred to above.

POINT NO.1 :

8. The burden of proving this issue is on the petitioner but he was not produced any evidence. From the side of management Sarvashri Swaroop Chand Gupta, Nathulal, Ramnath, K. K. Nagpal and Vivek Saxena have been examined on oath. From the side of the petitioner, petitioner Rajendra Kumar has filed his own affidavit but the non-petitioners have not subjected him to any cross examination.

9. First of all we would deal with the oral evidence led by the non-petitioners. Shri Swaroop Chand Gupta who was cashier of the non-petitioner's branch has testified that the petitioner was a daily wager and he has worked for 73 days only on daily wages of Rs. 9/- per day. He has also stated that Ex. M-11 to M-49 the payment vouchers. He has also stated that payment of daily wages was made on the same day of working or on his request was used to be made after 2 to 3 days. He has also testified that the petitioner used to do work of sweeping and making water available for drinking.

10. Another witness Nathulal Mehta was Branch Manager of the non-petitioners Company, has stated on oath that the petitioner was employed under him as a casual worker on daily wages of Rs. 9/- per day and he has worked as casual worker for 88 days only. His wages were paid through vouchers Ex. M-1 to M-8 which relate to him. He has also stated that no person named Jagdish Bairwa is employed in his branch.

11. Another witness Ramnath was Senior Divisional Manager, Transport Nagar Branch has stated on oath that he has employed Jagdish Bairwa as a casual worker from 1-11-83.

12. Vivek Saxena is the last witness examined by the non-petitioner says that no attendance register was maintained about casual labourers and payment of their wages is made through vouchers. He has also stated that no attendance register from 27-11-83 to 3-8-84 was maintained. To the same effect is the evidence of K. K. Nagpal.

13. From the Petitioners side, affidavit of the petitioner himself has been produced but he was not subjected to cross examination because the petitioner failed to produce him nor being subjected to cross examination therefore the affidavit filed by the petitioner cannot be read in evidence.

14. Having deal with the evidence produced by the parties, now I shall deal with the question whether the non-petitioners have been successful in discharging the burden for proving this issue. The learned representative of the non-petitioners has argued that from the evidence of the non-petitioner's witnesses, it is amply-proved that the petitioner has worked for 73 days in the branch of non-petitioner

No. 1 and 88 days in the branch of non-petitioner No. 2. He has further argued that from the evidence of the non-petitioners it is also established that the petitioner was a casual daily wager and was paid daily wages @ Rs. 9/- per day for which no Attendance Register was maintained. Being a casual and daily rated workers he has no right to be regularised and he has no right to be retained in the services. He has also further stated that the non-petitioners have not terminated him but his services have come to an end by efflux of time. In support of their arguments, the non-petitioners have relied upon the following rulings :

1. 1994 Lab. I.C. 1370, Pali Central Co-operative Bank Ltd. Pali Vs. Sunil Kumar Sharma (Hon'ble Rajasthan) High Court).
2. 1995 Lab. I.C. NOC 262 (Hon'ble Rajasthan High Court, Jaipur Bench) Rajeev Kumar Sharma vs. State of Rajasthan.
3. JT 1997(4) SC 560, Himanshu Kumar Vidyarthi Vs. State of Bihar and Others (S.C.).
4. 1997(3) W.L.C. 602, Indian National Bank Employees Congress Vs. Central Industrial Tribunal (Hon'ble Raj. High Court Jaipur Bench).
5. 1996 W.L.C. 447, Birdhi Chand Vs. The R.S.T.B.B. (Hon'ble Raj. High Court, Jaipur Bench).
6. 1992(3) W.L.C., 533, Ram Pratap Vs. State of Rajasthan & others (Hon'ble Raj. High Court).

15. Relying upon the above rulings and law laid down therein, the learned representative of the non-petitioner has argued that petitioner had no right to be retained in service and as such his removal from the services cannot be termed to be unjustified. He has also in the end, argued that the petitioner has not produced any evidence in support of his claim therefore, in the absence of the evidence of the petitioner award of no dispute deserves to be passed and the issue deserves to be decided against the petitioner.

16. On the other hand, the learned representative of the petitioner has argued that in the terms of reference, certain facts are admitted and for proving those facts the petitioner is not required to lead any evidence. The facts admitted in the reference and contained in the terms of reference, if read with the evidence of non-petitioner's witnesses, it is proved that the workman had worked for 240 days and the non-petitioners without complying the provisions of Section 25-F have removed him from the services and thereby they have breached the provisions of Section 25-F specially when no notice

of termination was given nor any compensation in lieu of notice was paid to him. The learned representative of the petitioner has also argued that from the evidence of the non-petitioners, it is proved that Jagdish Bairwa who was junior to him was retained in service and by not following the rule last-come-first-go, has flouted the provisions of Section 25-G of the I.D. Act and by not giving him an opportunity of re-employment, the non-petitioners have flouted the provisions of Section 25-H of the Act. In support of his arguments the petitioner has relied upon the following decisions :

1. F.L.R. 1967 (14) page 4 Delhi Cloth and General Mills Co. Ltd. Vs. Workmen.
2. 1979 Lab. I.C. 827 Pottery Mazdoor Panchayat Vs. The perfect Pottery Co. Ltd. and another (S.C.).
3. 1997 W.L.C. page 104, Patwar Prashikshan Kendra Deeg Vs. Shri Kailash Chand and other (Hon'ble Raj. High Court).
4. 1996 (74) F.L.R. 2063 (S.C.) Central Bank of India Vs. S. Satyam.

17. I bestowed my earnest attention to the arguments advanced by both the parties.

18. It is an admitted fact in this case that no evidence has been led from the said of the petitioner. It is also an admitted fact that evidence has been led by the non-petitioners and there is no evidence on the record to rebut their evidence. In view of this admitted fact, now we have to see whether the termination of the petitioner is unjustifiable.

19. The thrust of the argument of the petitioner as stated earlier, is on the fact that for deciding the reference, the court cannot go beyond the terms of the reference. In the case at hand, if we look to the terms of reference, then it is revealed that there is no dispute between the parties as to the petitioner having been in service for 240 days and persons Junior to him were appointed in his place.

20. We have to see whether in the light of the rulings relied upon by him, the above argument of the petitioner holds good. For deciding this issue it would be necessary to deal with the law laid down in the rulings relied upon by the petitioner.

21. In F.L.R. 1967 (14) page 4 (Supra) the Hon'ble Supreme Court has laid down that parties to the reference are open to show that dispute referred to is not an industrial dispute at all and it also certainly open to them to bring out before the tribunal the ramification of the dispute. But they cannot be allowed to challenge the very basis set forth the order of reference. The Hon'ble Supreme

Court has also laid down that the tribunal must in any event look to the pleadings of the parties to find out the exact nature of dispute because in most of the cases the order of reference is so cryptic that it is impossible to cull out there from the various points about which the parties were at variance leading to the trouble. It has also been laid down that it is certainly open to the management to show that the dispute which has been referred is not at all a dispute so as to attract the jurisdiction under I.D. Act but the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else.

22. Another case on which the petitioner has relied upon in *Pottery Mazdoor Panchayat Vs. the Perfect Pottery Co. Ltd (Supra)*. In this case the Hon'ble Supreme Court has held that the jurisdiction of the tribunal in industrial dispute is limited to the points specifically referred for its adjudication and to matters incidental thereto and the tribunal cannot go beyond the terms of reference. Where the very terms of reference showed that the point in dispute between the parties was not the fact of closure of its business by the employers and the references were limited to the narrow question as to whether the closure was proper and justified, the tribunals, by the very terms of the reference, had no jurisdiction to go behind the fact of closure and inquire into the question whether the business was in fact closed down by the management.

23. The last decision relied upon by the petitioner in this regard is *Patwar Prashikshan Kendra Deeg (Supra)*. In this case the Hon'ble High Court has held that the strictly constituting reference, so far as completing of 240 days are concerned, the reference was very clear that even on completing 240 days by the respondents whether the termination of the services of the petitioner was legal and justified. The reference implies that the workman had already completed 240 days of service and the Labour Court can not give any finding beyond the reference to this effect that workman had not completed 240 days of service.

24. From the law which has been deduced from the rulings relied upon by the petitioner, following principles emerges out :

1. That the jurisdiction of the tribunal in an industrial dispute is limited to the points specifically referred for its jurisdiction and to matters incidental thereto and the tribunal cannot go beyond the terms of reference.
2. That the parties to the reference cannot be allowed to challenge the very basis of issue set forth in the order of reference by contending that foundation of the dispute mentioned in the order of reference

was non-existent and the true dispute was something else.

3. That if any fact mentioned in the terms of reference showed that, that fact was not the dispute between the parties, then such fact by the implication shall be deemed to be correct and the court cannot give any finding contrary to such fact.

25. Here in this case, if we go through the reference, it comes out that the reference is based on the fact of the workman i.e., petitioner, having worked for 240 days. In other words means that the factum of the petitioner having worked for 240 days is the basis of the reference and the parties to the reference in the light of principles stated above, cannot be allowed to challenge it nor this court is empowered to give any finding contrary to this fact. If it is so, then the evidence which has been led by the non-petitioners that in all he has worked for 163 days and he has worked for 240 days, cannot be given any weight and on the basis of that evidence this court cannot give any contrary finding to that which in other words means that this court will have to pre-suppose about the petitioner having worked for 240 days and this pre-supposition is that basis of the terms of reference.

26. Having held so, now we will have to see further whether the termination of the services of the petitioner is justifiable. Before deciding this question I would like to deal with the rulings relied upon by the petitioner. All the rulings which have been relied upon by the petitioner relate to the regularisation of the services and all of them relate to the workers who were employees of the government. Here in this case question of regularisation is not involved and as such rulings relied upon by the petitioner do not render any help to him.

27. Now I shall deal with the question relating justifiability of the termination. It is a settled law that proceedings before the industrial court are judicial in nature and even though Evidence Act does not apply to the proceedings, still the principles underlying the Evidence Act applies to them. It is well-settled that if a party challenges the legality of an order the burden lies on him to prove the illegality of order and if no evidence is produced by the party invoking the jurisdiction of the court must fail. In the case under consideration the reference has been made at the instance of the petitioner and consequently the burden lay on him to set ground challenging the validity of termination order and to prove that termination order was illegal. The petitioner here in this case did not appear as a witness nor produced any other evidence. With the result that there is no material before this court for recording the finding that order of termination was unjustified and illegal except the evidence produced by the non-petitioner. Even in the evidence

produced by the non-petitioner no such evidence has come out on the basis of which any finding about unjustifiability or illegality can be given. For example, in the statement of claim breach of section 25-F-gh, of the Act has been alleged but not a single question has been put to the witnesses of the non-petitioner nor anything has been extracted from them so as to enable this court to give finding as to unjustifiability and illegality of the termination. In the absence of any evidence on the part of the petitioner this court cannot hold that the order of termination is unjustified or illegal. It is correct that in the terms of reference factum of termination has been mentioned and factum of appointment of junior person has been mentioned but these facts are the facts on which the point of dispute rests. These facts have to be proved by the parties. If the party fail to prove it, then merely from their aid no positive finding about the existence of this fact can be given.

28. In view of the foregoing discussion, we cannot reach to any conclusion excepting the one that it has not been proved that the termination of the petitioner is unjustifiable or illegal. Consequently this issue is decided against the petitioner and in favour of the non-petitioner.

ISSUE NO. 2 :

29. In view of the decision on issue No. 1 against the petitioner, this issue is also decided against the petitioner.

30. As a result of the findings regarding issue No. 1 and 2 the following award is passed in this case :

“That the action of the management of United India Insurance Co. Ltd., Jaipur in terminating the services of the petitioner Shri R. K. Sharma is not unjustifiable. Hence the petitioner is not entitled to any relief.”

31. The Award is pronounced in the open court today the 18th September, 1998. Let the award be sent to the Central Government for publication as per rules.

M. C. TAYLOR, Judge

अक मंत्रालय

नई दिल्ली, 1 जुलाई, 1999

का.सा. 2106.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ बिकानेर एंड जयपुर के प्रबंध-सूत्र के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-6-99 को प्राप्त हुआ था ।

[सं. एल-12012/35/95-आई.आर. (बी-I)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 1st July, 1999

S.O. 2106.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947); the Central Government hereby publishes the award of the Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner and Jaipur and their workman, which was received by the Central Government on 29-6-1999.

[No. L-12012/35/95-IR(B-I)]

C. GANGADHARAN, Desk Officer

ANNEXURE

CENTRAL INDUSTRIAL TRIBUNAL JAIPUR

Case No. CIT-27/1996

Reference:

Govt. of India, Ministry of Labour, New Delhi
Order No. L-12012/35/95/I.R. (B-I) dated Nil.

Pooran Chand Meena S/O Shri Ram Candra Meena, Narain Ji Ki Bageechi, Moti Doongri Road, Jaipur.

...Applicant

Vs.

Manager (I.R.) State Bank of Bikaner and Jaipur
Tilak Marg, Jaipur.

...Non-applicant

PRESENT:

Presiding Officer : M. C. Taylor, RHJS

For the Applicant—Shri M. F. Baig.

For the Non-applicant—Shri H. C. Chhabra.

Date of Award: 1-4-1999

AWARD

The Central Government has referred this dispute for adjudication to this Tribunal for u/s. 10(1) of the Industrial Disputes Act, 1947 (hereinafter would be referred to as an Act). The terms of the reference are as under:

“Whether the action of the management of S.B.B.J., Jaipur is justified in terminating the services of Shri Pooran Chand Meena w.e.f. 13-4-92? If not, to what relief the workman is entitled?”

2. In support of the reference the applicant has filed his statement of claim alleging that the first appointment to the applicant was given on 1-9-90 and thereafter he had been working regularly under non-applicants with honesty and sincerely, in Eapu Nagar Branch of the bank. He has further alleged that on 13-4-92 his services were terminated without showing any cause. Before termination in the preceding year he has completed services for more than 240 days. Before terminating his services, seniority list ought to have been prepared and published but the non-applicants did not do it under Rule 77 of Industrial Disputes Rule (hereinafter would be referred as I.D. Rules) nor before terminating his services any notice

was given to him nor any notice pay in lieu of such notice was given with compensation as such the non-applicants have violated Section 25-F, G and H of the Act specially in view of the fact that fresh appointments have been made after termination of his services. Lastly he has alleged that his claim should be accepted and order of termination should be set aside with all consequential benefits.

3. The non-applicants have contested the claim of the applicant and in their reply they have not replied contents of paras 1, 2 and 3 on the ground that they don't need any reply. So far as other paras are concerned, the non-applicants denied them and pleaded that the claimant was engaged as contractual labour for the first time on 1-9-90 at Bapu Nagar Branch of the non-applicant to do various menial work such as storage of water, watering the lawns, filling water in the coolers. They have further pleaded that the applicant was never given or offered regular appointment as peon in regular full time or part time of the bank. He was given appointment for the work done by him after completing the work for which he was engaged from time to time. It has also been pleaded that since the applicant was a contractual and casual labourer and was paid contracted amount so his disengagement did not call for any notice or explanation before dis-engaging him. It has also been pleaded that the claimant was being engaged from time to time for menial work as a contractual labour and he could not be treated as a workman under the provisions of the Act and as such there was no necessity of giving any notice to him or pay in lieu of such notice with compensation and as such provisions of Section 25-F, G and H of the Act have not been flouted. Lastly it has been pleaded that there is a set procedure for recruitment of staff in the service of the non-applicant. The claimant is in-disguise trying to back door entry in the service of the bank which is against social justice and fair play. In any way his entry through this process in a public sector undertaking would place him in an advantageous position over others who have to go through competitive examination. Therefore, in the above circumstances the claim of the applicant should be turned down.

4. The claimant in support of his claim has examined himself on oath and has relied upon certain documents which would be referred to as and where needed and which have been exhibited as W-1 to Ex. W-56. On the other hand the non-applicants have examined one Shri Mahendra Kumar Jain on oath and have relied upon the documents Ex. B-1 to B-7 which would be referred to as and when necessary.

5. Both the sides were heard and evidence available on the file was perused by us. Following are the points for determination in this reference :

- (1) Whether the management is justified in terminating the services of Shri Pooran Chand from 13-4-92?
- (2) If not, what relief the workman concerned is entitled to?

6. The above points shall be taken up in the order given above:

2006 01/09-9

Point No. 1:

7. In support of this point the applicant has examined himself on oath. In his statement the workman has testified that on 1-9-90 he was appointed as Class IV and all of a sudden his services were terminated on 13-4-92, without assigning any reason. He has also testified that before terminating his services he was neither given any one month's notice nor any pay in lieu of such notice with retrenchment compensation. He has also testified Ex. W-1 to W-56 which are payment vouchers.

8. In rebuttal the management has examined Shri Mahendra Kumar Jain on oath. He in his statement has testified that no attendance register is available about the workman Pooran Chand Meena nor he was paid monthly pay like other staff members. He has also testified that his name was neither summoned from the Employment Exchange nor he was given any appointment letter. In 1989 w.e.f. 15-12-89 temporary appointment in the cadre of sub-staff has been banned. He has also testified that Shri Meena was a casual worker and work was taken from him according to the need. He has also testified that since 1-9-90 no work has been taken continuously from him. He has also testified that after 10-2-91 work from him taken from 18-3-91, 17-8-91 the work was taken from him from 16-12-91.

9. Having dealt with the evidence led by both the sides now we have to see whether the action of the management in terminating the services of the workman can be termed to be justifiable and legal. In this regard at the very outset we would like to say that the workman has straight away come up with the plea that before termination of the services he has completed services for more than 240 days. This plea taken up by the workman has not been denied by the management in their reply. Not only this the management has examined one Shri Mahendra Kumar Jain who was not posted as a Manager at the relevant time when the workman remained employed and he could not be expected to have personal knowledge of the facts except the facts available on the file. He also in cross examination has not refuted the fact of the workman having completed services of 240 days rather giving evasive reply in cross-examination he has stated that the court itself should calculate as to whether he has completed the services of 240 days, that in other words means that by implication he has not denied the factum that the workman has worked for more than 240 days. Thus in view of the foregoing discussion we do not have any hesitation in saying that the workman had worked for 240 days. In view of the fact that the workman had completed 240 days we have to see as to whether there are facts on the file from which it can be inferred that the action of the management in terminating the services of the workman is unjustified. The workman in his examination has stated that before term initiating his services he was neither given any one month's notice nor he was paid any pay in lieu of such notice along with retrenchment compensation. Having worked for 240 days under Section 25F the workman was entitled to have one month's notice or pay in lieu of such notice and also a retrenchment compensation which in other words means that the management was under an obligation to comply with the mandatory provisions of

Section 25-F of the Act before terminating his services. The management in this case did not do so by not giving him one month's notice or pay in lieu of such notice and by not giving retrenchment compensation. This action on the part of the management and of the official who without complying with the provisions of Section 25-F of the Act terminated the services of the workman is totally against law and arbitrary and the officer who so ever has done so must account for his action who by an illegal act creates unnecessary liability on the bank. Consequently the termination of the workman without complying of Section 25-F of the Act is indecitably illegal and unjustifiable. Accordingly the point under consideration is replied in negative against the management and in favour of the workman.

Point No. 2:

9. In this regard the learned representative for the petitioner has argued that since the services of the petitioner have been terminated without complying of the provisions of Section 25-F of the Act, therefore, the workman should be reinstated with full back wages. On the other hand the learned representative of the management has argued that the Bank is a public institution and in public institution a person cannot be given employment till there exists a sanctioned post for the work in bank. Admittedly position of the workman was that of daily wager and he was a casual worker. His employment was not against a permanent post and if he is re-instated then it would amount to taking the workman back without there being any post and which would in turn would result in unnecessary burden on the bank and back door illegal entry without selection or per rules. He also argued that in the banks the bank has completely prohibited the employment of temporary persons and even after such complete prohibition if the workman is taken back in service then it would purely be a back door entry without through the process of regular selection. The Hon'ble Supreme Court has held that such back door entry employment should not be encouraged. Therefore, the request of the workman for reinstating him with back wages cannot be accepted.

10. I bestowed my earnest attention to the rival arguments. There is no doubt that the bank is a public institution and in a sense falls within the definition of State. There are rules which govern the regular selection and there are rules which mandate how the regular selection shall be made. In the garb of giving casual employment for work of casual nature and seasonal nature, a workman cannot be allowed to have back door entry in the bank by flouting the rules. Looking to the facts and circumstances of the case we are of the opinion that to do justice to both the workman and the management it would be proper and justifiable that the workman should be given one time compensation instead of giving him relief of reinstatement in service. Looking to the period involved and looking to the post he was holding, a Lump-sum compensation of Rs. 1.00 lakh would be sufficient to meet the ends of justice along with one month's pay in lieu of notice. Re-instatement will not be justifiable because it would not only entail the displacement of regularly appointed workers but would also encourage the back door entry in the service which has been disapproved by the highest court of land.

11. However, before concluding the judgment I cannot help observing that the institution of bank has been visited with financial burden to the tune of Rs. 1.00 lakh on account of arbitrary and illegal action of the person who terminated the services of the workman. To discourage such a tendency it would be desirable that the sum be recovered from such an official who acted arbitrarily and illegally.

12. In view of the decision on point No. and point No. 2, following award is passed in this case :

"The action of the management of S.B.B.J., Jaipur in terminating the service of Shri Pooran Chand Meena w.e.f. 13-4-92 is not legal and justifiable. The workman is entitled a lump-sum amount of Rs. 1.00 lakh as compensation."

13. The Award is pronounced today in the open Court i.e. 1st April 1999. Let the Award be sent to the Central Government for publication.

M. C. TAYLOR, Judge

नई दिल्ली, 1 जुलाई, 1999

का.आ. 2107:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक आफ़ बीकानेर एंड जयपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जयपुर के पंचायत को प्रकाशित करती है जो केन्द्रीय सरकार को 29-6-99 को प्राप्त हुआ था ।

[सं. एल-12012/116/96-आई.आर. (बी-1)]

सी. गंगधरान, डेस्क अधिकारी

New Delhi, the 1st July, 1999

S.O. 2107.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Bikaner & Jaipur and their workman, which was received by the Central Government on 29-6-99.

[No. L-12012/116/96-IR(B-I)]

C. GANGADHARAN, Desk Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,
जयपुर ।

केस नं. : सी आई.टी. -बी-30/97

विज्ञप्ति संख्या : एल-12012/116/97-आई.आर. (बी)

श्री जगदीश नारायण गुप्ता,

पुत्र श्री कल्याण सहाय गुप्ता,

द्वारा श्री आपभक्त जैन,

भारतीय मजदूर मंच राजस्थान

42, पटेल कालोनी, सरदार पटेल मार्ग,

सी-स्क्रीम, जयपुर ।

बनाम

ग्रॉस मैनेजर

स्टेट बैंक ऑफ बिकानेर एण्ड जयपुर,
दौसा, जयपुर।उपस्थित :—भारतीय मजदूर संघ की ओर से—कोई नहीं।
एम बी बी जे की ओर से—श्री एन. सी. गोयल,
एडवोकेट

पंचाट तारीख : 18-6-99

पंचाट

केन्द्रीय सरकार के उक्त आदेश द्वारा निम्न विवाद
इस अधीकरण को न्याय निर्णयन हेतु निर्देशित किया गया है—

“Whether the workman Shri Jagdish Narain Gupta S/o Kalyan Sahai Gupta is entitled for employment as sub-staff, whose services were terminated w.e.f. 15th November, 1994 (A/N) by the Management of State Bank of Bikaner & Jaipur, Jaipur after working as Water Boy from 1st August, 1992 to 31st October, 1994 in Dausa branch of State Bank of Bikaner & Jaipur, and working in Piao of the Bank from April, 1992 to 31st October, 1994? If not, what relief to the workman is entitled to and from what date?”

पक्षकारों को नोटिस जारी किए गए। भारतीय मजदूर संघ की ओर से अथवा श्रमिक की ओर से बावजूद तामील रजिस्टर्ड नोटिस कोई उपस्थित नहीं आया, न ही कोई क्लेम प्रस्तुत किया गया, जिससे ऐसा प्रकट होता है कि भारतीय मजदूर संघ को क्लेम फाइल करने में कोई रुचि नहीं है। उक्त परिस्थितियों में विवाद रहित पंचाट पारित किया जाता है। इस पंचाट की एक प्रतिलिपि भारत सरकार को औद्योगिक विवाद अधिनियम, 1947 की धारा 17(1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाए।

ह./

पीठासीन अधिकारी

नई दिल्ली, 1 जुलाई, 1999

का.आ. 2108.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार रिजर्व बैंक ऑफ इंडिया के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधीकरण, जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 20-6-99 को प्राप्त हुआ था।

[सं. एल-12012/250/95-आई.आर. (बी.-I)]

सी. गंगाधरन, डेस्क अधिकारी

New Delhi, the 1st July, 1999

S.O. 2108.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Jaipur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Reserve Bank of India and their workman, which was received by the Central Government on 29-6-1999.

[No. L-12012/250/95-IR(B-I)]

C. GANGADHARAN, Desk Officer

अनुबंध

केन्द्रीय सरकार औद्योगिक अधीकरण एवं श्रम न्यायालय,

जयपुर

केस नं. सी.आई.टी.-बी-19/97

विशेष संख्या—एल-12012/250/95-आई.आर.

(बी. I)

श्री नंदलाल हटवाल,

पुत्र श्री नाथुलाल, हरिजन बस्ती,

कालाडेरा, बाया चौम, जयपुर।

बनाम

मैनेजर,

रिजर्व बैंक ऑफ इंडिया,

रामबाग सिकल, जयपुर।

उपस्थित—श्री नंदलाल हटवाल

—स्वयं उपस्थित

रिजर्व बैंक ऑफ इंडिया

की ओर से

—कोई नहीं।

पंचाट तारीख :—16-6-99

पंचाट

भारत सरकार की ओर से उक्त विशेष के द्वारा निम्न विवाद तय किये जाने हेतु निर्देशित किया गया—

“Whether the action of the management of R.B.I. Jaipur is justified in terminating the services of Sh. Nandlal Hatwal, part time Sweeper w.e.f. 21-11-1994 in violation of Section 25F of the I.D. Act, 1947 as he has completed more than 240 days of service in a year prior to the date of termination? If not, to what relief the workman is entitled to?”

पक्षकारों को नोटिस जारी किये गये। श्रमिक नंदलाल ने प्रार्थना पत्र प्रस्तुत किया कि विपक्षी बैंक से उसका समझौता हो गया है एवं वह अपना केस वापस लेना चाहता है। उनके द्वारा कोई स्टेटमेंट ऑफ क्लेम पेश नहीं किया गया चूंकि पक्षकारों के बीच समझौता हो चुका है। व प्रार्थी श्रमिक स्टेटमेंट ऑफ क्लेम फाइल करने में रुचि नहीं रखता अतः विवाद रहित पंचाट पारित किया जाता है। पंचाट की एक प्रतिलिपि भारत सरकार को औद्योगिक विवाद अधिनियम, 1947 की धारा 17(1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाये।

ह./

पीठासीन अधिकारी

नई दिल्ली, 1 जुलाई, 1999

AWARD

का.आ. 2109:—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, मुम्बई के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-6-99 को प्राप्त हुआ था।

[सं. एल-12012/162/97-आई०आर० (बी-1)]

सी गंगाधरन, डेस्क अधिकारी

New Delhi, the 1st July, 1999

S.O. 2109.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of Indore and their workman, which was received by the Central Government on 29-06-1999.

[No. L-12012/162/97-IR(B-I)]

C. GANGADHARAN, Desk Officer.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. II, MUMBAI

PRESENT :

Shri S. B. PANSE, Presiding Officer.

Référence No. CGIT-2/12 of 1998.

Employers in relation to the Management of
State Bank of Indore.

AND

Their Workmen.

APPEARANCES :

For the Employer.—S/Shri A. V. Bukhari &
A. S. Peerzada Advocates.For the Workmen—Shri V. S. Kukday, Advocate.
Mumbai, dated 10th June, 1999.

The Government of India, Ministry of Labour by its Order No L-12012/162/97-IR(B-I), dated 23-2-98, had referred to the following Industrial Dispute for adjudication :—

“Whether the action of the Management of State Bank of Indore, Nagpur, in terminating the services of Shri Damodhar S/o Sadashivrao Agare w.e.f. 22nd February, is legal and justified? If not, to what relief the workman is entitled?”

2. Damodar Sadashiv Rao Agare the workman was appointed as a peon/Farash by an appointment letter dated 7-2-89 purely on temporary basis. He worked up to 21-4-89 that is 74 days. The workman opened the account in the name of Tarachand Safai Agency in the bank somewhere in September, 1992. From September, 1992 till 22nd February, 1997 i.e. till his termination the amount for which he carried out was deposited in the said account. These are the facts which are not in dispute.

3. The workman in his Statement of Claim (Ex-5) pleaded that right from September, 1992 till his termination he continuously worked as a peon-cum-Farash. His appointment was oral. He was asked to do ancillary work such as cleaning, going for clearing job in the RBI, and for other bank work. It is averred that he has completed 240 days of continuous work. In every year more particularly in the last preceding year.

4. The workman averred that at the time of appointment in September, 1992 the Branch Manager directed him to open an account in the branch in the name of M/s. Tarachand Safai Agency which came to be opened on 26-9-92. It was opened on suggestion of the Branch Manager to show that the workman is a proprietor to the said agency and not their employee. But infact the workman was their employee. The workman has to accept it because he was threatened that he will not get work. It is averred that in each month on the pay day the bank used to deposit the salary of workman in the said account after obtaining the letters purporting to be bills from the work carried out by the workman. The workman pleaded that he used to sign the attendance register but after his demand notice those registers were tampered with or destroyed by the bank. His name was also recommended by the bank to the Head Office for the appointment but it was not considered. The workman pleaded that he informed the bank if he is given a fresh appointment he will

not claim back wages. Instead of that his name was not considered. It is averred that after his termination the bank had appointed new persons in his place violating the provisions of Industrial Disputes Act of 1947. For all these reasons it is prayed that the reference may be answered in favour of the workman and he may be reinstated in service with full back wages w.e.f. 22-2-97 till his reinstatement with continuity in service.

5 The management resisted the claim by the Written Statement (Exhibit-10). It is denied that Agre is their employee. It is submitted that he approached the bank and informed that he floated an agency called Tarachand Safai Agency for cleaning of the premises and other services. The bank used to get the said cleaning work done by hiring the services of some security service or by engaging Safai agency. It is averred that after engaging the safai agency the bank called upon the servants of the said agency for doing the work of cleaning etc. and the agency used to send their services to the bank premises for the said work. As the workman had worked with the bank for some days the bank had engaged the services of Tarachand Safai agency. The agency used to send the man for the work and their payments used to be made on the basis of the bills to the account. It is averred that the workman was never employed by the bank. Therefore, there is no question to his service being terminated w.e.f. 22-2-97, as claimed by him.

6. It is averred that the selection of an employee of the bank is as per the rule. Even though the bank recommended the name of the workman he could not be selected and some other one sponsored by the employment exchange was considered. It is submitted that all other contentions raised by the workman in his statement of claim which are contrary to the stand of the management are denied. It is submitted that the workman is not entitled to any of the reliefs as claimed.

7. The workman filed a rejoinder at Ex-12. He reiterated the contention taken by him in the statement of claim and denied the statements which are contrary to his stand made by the bank. He narrated the circumstances to show that he is an employee of the bank.

8. The issues are framed at Exhibit-15. The issues and my findings thereon are as follows :—

ISSUES

FINDINGS

1. Whether it is proved that Damodhar Yes.
Sadashiv-Rao Agre was in continuous services of the bank as contemplated under section 25B of the Industrial Disputes Act of 1947?
2. Whether the termination of Agre Yes.
dtd 22-7-97 is illegal termination under the Industrial Disputes Act of 1947?
3. Whether the bank did not comply Yes.
with the provisions of the retrenchment?
4. Whether the action of the man- No.
agement in terminating the services of Yadav is legal and justified?
5. If not, to what relief he is en- As per
titled to ? order below.

REASONS

9. To bolster up the case D. S. Agre filed his affidavit at (Exhibit-30) A & B) and produced different documents. As against that the management examined one Neeraj Nayak (Ex-36) the Manager of the bank and produced some documents on the record. The parties orally argued the matter and also filed written arguments.

10. Neeraj Nayak (Ex-36) the Manager in categorical term admits the position that he never worked as a Manager at Nagpur nor the workman worked under him. He deposed on the basis of the record of the office. He deposed that the Managers Purade, Bhagwe and Harkare are at Nagpur and they are still working there. He had not given any explanation why in particular Manager Harkare is not examined in this matter. It is because the workman in categorical term and deposed that the photocopies of the documents which are produced on the record were allowed by him and further Harkare knows about his work in the Branch. Therefore it was necessary for the bank to examine Harkare and the other Managers under whom the workman worked. They would

have been in a better position to depose what work exactly were carried out by the workman. The explanation given by Neeraj that as the Regional office deals with the Industrial disputes he is deposing before the court is not satisfactory nor sufficient. In other words what is deposed by Neeraj is not sufficient to establish the case of the bank or it is not sufficient to destroy the case which is forwarded by the workman with the documents on the record.

11. At this juncture I may mention it here that the photocopies of the documents which are produced by Agre are of the bank's documents. If really the bank had a grievance in respect of these documents it should have produced its original copies contending that a fabrication is carried out by the workman in those documents and further that they are not genuine. But nothing to that effect had taken place.

12. Agre, the workman affirmed that in the year 1987 he was first appointed as a peon/farash. He worked for 74 days. Thereafter again in 1990 for about four months he worked in that capacity. He affirmed that in September 1992 he was appointed as a peon/farash when the bank required his service. He affirmed that he worked in that capacity till 22-2-97. He deposed when he was appointed in September 1992 he was not issued any appointment letter. He gives his working days viz. September 1992 to August 1993—275 days; September, 1993 to August 1994—255; September 1994 to August, 1995—182; September, 1995 to August, 1996—312; September 1996 to 22nd February, 1997—172 days. So far as these working days are concerned they are not seriously disputed. If 12 months preceding his last working day i.e. 22-2-97 is taken into consideration it can be obviously seen that he worked for more than 240 days.

13. Agre affirmed that when he was appointed in September 1992 the Branch Manager directed him to open an account in the bank, for depositing his salary in the said account. He accordingly signed the account opening form (Exhibit-26) and an account bearing No. 1608 was opened in that branch. It is tried to argue on behalf of the bank that these forms bears the signature of the workman having designation as a

Proprietor of 'Tarachand Safai Agency'. Agre affirmed that he did open the account in the name of Tarachand Safai Agency but he never said that he is a proprietor of that agency. But the fact still remains that the account was opened in the name of Tarachand Safai Agency and amounts were deposited in the said account. Agre affirmed that these amounts varied because the working days varied. It is tried to submit on behalf of the management that the agency used to send their man for the work and as per the work carried out the amounts were deposited in the account. The witness had not given the names of the different persons who used to come for the work. If really that would have been an agency then different persons would have come to work in the bank. If really the contract was given to that agency there should have been a contract to that effect. No such document is produced on the record. Therefore it has to be accepted which is stated by Agre that to defeat his claim he was directed to open the account in the name of Tarachand Agency which he did. The bank used to deposit the amount in it as per his working days that is the bills submitted by him (Exhibits 31 and 32).

14. The workman alongwith his written argument had produced photocopy of the savings books ledger from 1995 to 1997 (Exhibit-39|1) in respect of Tarachand Safai Agency. As this document was not produced earlier the management did not say anything in respect of the same. Infact this document which was in the custody of the management they should have produced it. After perusal of this document it can be seen that the amounts which are deposited in this account are normally in the last date of the months and it is rightly argued that to defeat the claim of the workman different amounts are deposited on one day. That shows the intention of the bank to defeat the claim of the workman. I repeat that eventhough I have made these observations I do not rely upon Exhibit-39|1 as it was not produced earlier.

15. Agre affirmed that he was doing the work of a peon in the bank alongwith cleaning work. Exhibit-

24|1 is a peon book. He affirmed that it does not bar the officers signature. It is common knowledge that the peon book never bears the officers signature because the peon writes the name of the article to whom it is to be delivered, the date and the receivers signatures, the messengers name is also there. He had affirmed in categorical term that Harkare Saheb i.e. the Branch Manager had given him the work to be done and he did it. After perusal of these documents it can be seen that he must have worked for that purpose. The bank should have examined the Branch Manager to deny this position which they did not.

16. Exhibit-24|2 is a letter written by Branch Manager to the Reserve Bank of India Clearing House, Nagpur which is dtd. 28th December, 1996. He had informed the man that their bank had left a cheque of Rs. 4,400 with then and he requested to return the said cheque to the bearer of the letter and in the bracket name of Agre is mentioned. Agre affirmed that he went to the RBI collected the cheque. This is to show that he could do that work because he was employee of the bank and was working and it is not that he was working as an employee of Tarachand Safai Agency as alleged. It is argued that if really he would have been working only for cleaning purpose he would not have asked to do this type of work. I find substance in it. It is tried to argue that this letter is not on the letter head, but the explanation given by the workman that it bears the stamps of the bank and the accountant Dhaple had signed it. I do not find any reason to disbelieve the workman on any ground.

17. The workman affirmed that the bank used to get their documents photocopied from Rolly Zerox. The book is maintained for that purpose and the person who used to go for getting the copies xeroxed used to sign it. He produced photocopies of the delivery challans of Rolly Zerox at Exhibit-24|3. He affirmed that those documents bears signatures of the Branch Officer and he could xerox copies from the Rolly Zerox office. On its basis he affirmed that he worked on the days which I have stated above. There is no proper explanation from the bank in respect of

this documents. It is common knowledge that the bank gets such work done from other agencies and there is no reason to disbelieve Agre that he was going for getting the xerox copies from the said company for the bank, as the book bears his signature with others.

18. Agre affirms that Exhibit-24|5 is an extract from the cash deposit register for depositing the amount with the Reserve Bank of India. He had signed that register for depositing the amount with the bank. Its register is also signed by other employees of the bank alongwith him. He could get the xerox copy of it with the permission of the bank. Harkare gave such a permission. Again this Branch Manager comes into the picture. If really the workman could get photocopies of all such documents from the bank I find that he must be working with the bank as an employee and all the staff members must be helping him. It is difficult to accept that he could get copies of these papers without the consent of the officers. Leaving aside whether he gets consent or not, the fact still remains that there are such documents in the custody of the bank and they bears signatures of the workman. If really he would not have worked as alleged by him he would not have signed these documents. It is difficult to accept that he signed these documents later on to substantiate his case.

19. Agre affirms that he was issued official pass, for going to the Reserve Bank of India which he produced alongwith (Exhibit-24|4). It is signed by Assistant Treasurer and by the workman himself. It is tried to suggest that such stamps are lying in the bank and the workman had utilised it. I am not inclined to accept this. It is because the banks witnesses could have deposed that the signatures on this pass is not of their employees and the person who alleged to have signed this document would have been

examined by the bank stating that he had not signed it but nothing of that sort had taken place.

20. It is tried to argue on behalf of the management that initially the bank appointed the workman in 1989 by appointment letter (Exhibit-25) for a specific period. If really the bank wanted to appoint him they would have done so by giving him appointment letter. Therefore the contention of the workman that he was appointed in September 1992 is not correct. On the other hand the Learned Advocate for the workman argued that he was appointed in September 1992 without appointment letter because the bank had an intention that he should not get the benefits a regular employee. To come out of that they asked him to open the account as Tarachand Safai Agency and asked him to work. He affirmed that he was getting Rs. 50 per day and on the basis of the working days the amount used to deposited in his account. The explanation given by him appears to be more probable in view of the documents which I have referred to above.

21. The bank had produced copies of attendance register for the month of September 1992 to February 1997, maintained by it alongwith (Exhibit-35). It does not bear the signature of the workman. No doubt in the statement of claim he had made the statement that he had signed the attendance registers but they are destroyed by the bank. He had further deposed that they are fabricated by the bank. I find that as the management wanted to get the work done from him without showing him as an employee who was not allowed to sign the attendance register. It is therefore it does not bear the signature of the workman. If he would have signed it straight away he would have been the employee of the bank.

22. It is not in dispute that after Agre was not allowed to work in the bank some other persons were appointed by calling their names from the employment exchange. Looking to the nature of the job which Agre was doing and the experience which he is having I really fail to understand how he was not given the clear appointment even though he offered to get it as a fresh appointment.

23. It is not in dispute that before terminating the services of Agre he was not given any notice, nor any

retrenchment compensation. Obviously his termination is illegal. For the above said reasons I record my findings on the issues accordingly and pass the following order :—

ORDER

The action of the management in terminating the services of Shri Damodhar Sadashivrao Agre w.e.f. 22-2-97 is not legal and not justified. The management is directed to reinstate him in service in continuity and pay him full back wages w.e.f. 22-2-97.

S. B. PANSE, Presiding Officer

नई दिल्ली, 12 जुलाई, 1999

का.आ. 2110:—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम-10 के उपनियम (4) के अनुसरण में थर्म मंत्रालय के अधीन खान सुरक्षा महानिदेशालय, धनबाद के निम्नलिखित क्षेत्रीय कार्यालयों को एतद्द्वारा अधिसूचित करती है :—

1. खान सुरक्षा निदेशक का कार्यालय, जबलपुर क्षेत्र, जबलपुर।
2. खान सुरक्षा निदेशक का कार्यालय, बिलासपुर क्षेत्र, बिलासपुर।

[फा. सं. ई-11011/1/93-रा.भा. नी.]

डॉ. प्रफुल्ला कर्कट्टा, उप सचिव

New Delhi, the 12th July, 1999

S.O. 2110.—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following Regional Offices of Director-General of Mines Safety, Dhanbad :—

1. Office of Director Mines Safety Jabalpur Region, Jabalpur.
2. Office of Director Mines Safety Bilaspur Region, Bilaspur.

[F. No. E-11011/1/93-RBN]

DR. PRAFULLA KARKATTA, Dy. Secy.